THE PRACTICE AND PROCEDURE OF THE HOUSE OF LORDS 1714-1784

A THESIS

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by

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DECLARATION

I declare that this dissertation is the result of my own independent investigation. I also declare that this dissertation has not already been accepted in substance for any degree, and that it is not being concurrently submitted in candidature for any other degree

Date 14.iv.87.

Anita J. Rees

I confirm the above declaration.

Supervisor

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I also wish to thank Mrs. Ethel Phillips for typing the thesis with such care and patience.

SUMMARY

This thesis is a study of the procedures for conducting business in the House of Lords between 1714 and 1784. The first chapter is a general introduction to the House of Lords, attention being given to the topography, membership, privileges and servants of the House.

The next four chapters survey the Lords' power and methods of inquiry, the passing of legislation, and the judicial powers of the Lords, both civil and criminal jurisdiction.

Chapter VI studies the procedures for scheduling business in the House. Chapter VII examines the practices for summoning the attendance of peers at the House of Lords. Actual attendances at important political events are analysed.

Chapter VIII assesses the seating capacity of the House of Lords chamber, and traces the collapse of the official seating order due to the increased membership of the House. Chapter IX deals with the admission of strangers, and the problems caused by the absence of a gallery. Chapter X describes the format of a day in the Upper Chamber of Parliament, and traces the trend to a later start of public business.

The next four chapters describe the manner of conducting business in the House of Lords: the method of making motions and the means of evasion; the rules and pattern of debate; the division procedure, including the use of proxies and the right of Protest; and the types and role of Committees in the House.

Chapter XV examines the role of the Lord Chancellor as Speaker of the House of Lords, and describes his ceremonious and formal duties in the House. Chapter XVI describes the proper methods of communication between the two Houses of Parliament and explains the causes of their rivalry and disagreements.

CONTENTS

P R E F A C E

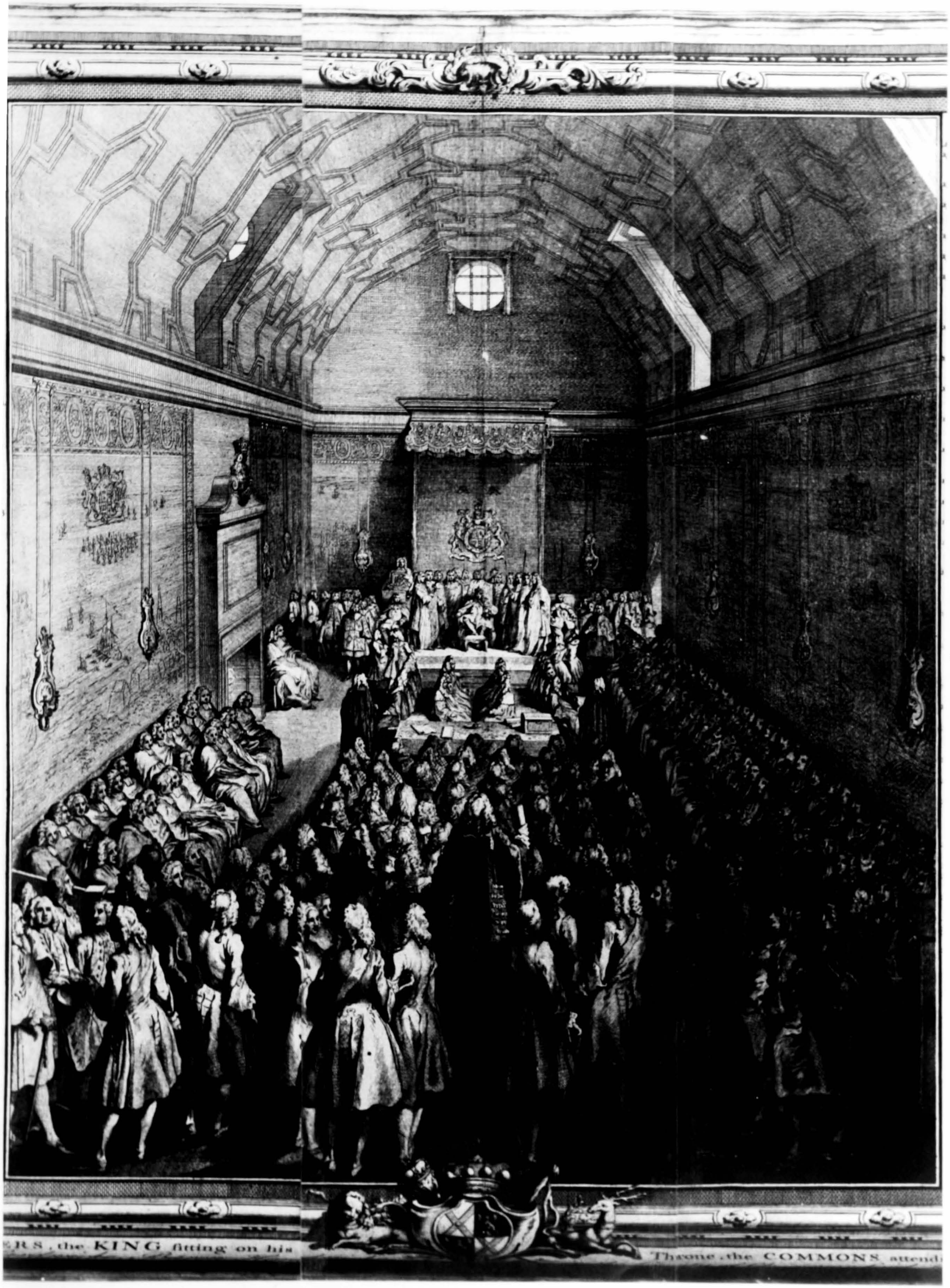
This thesis is a study of the House of Lords in the eighteenth century, a period when the House was still a very powerful institution, and its members were the leaders of society and politics. The thesis, however, is not an attempt to rewrite A.S.Turberville's history of the Lords, but a study of the practice and procedure of the House in conducting its business as the Upper Chamber of Parliament.

The main sources used have been the political correspondence and memoirs of peers. The paucity of the evidence and the lack of formal reports of proceedings inevitably means that much of what is written is inconclusive.

The Complete Peerage is the unacknowledged source of all the biographical information about the peers named in the thesis. Their titles have been spelt as they appeared on their patents, and the peers referred to are those who held the titles at the time of the dates quoted. Dates before 1752 are all Old Style, except that the year is taken to have begun on 1 January.

The House of Lords' Roll of Standing Orders has been cited and quoted as published in H.M.C. Manuscripts of the House of Lords, vol.xii (new series). Where division figures have been given, these have been quoted (unless otherwise stated) from J.C.Sainty and D.Dewar, Divisions in the House of Lords : An Analytical List, 1687 to 1857. These are the division figures to be found in the House of Lords Manuscript Minute Books, and have been followed even when discrepancies have emerged from other sources. The spelling of quotations has been modernised, where necessary, to avoid confusion.

Finally, I wish to thank the Bodleian Library for permission to reproduce the illustrations from the Gough Maps 23 (ff.2,50B,52,53).


RS, the KING sitting on his
Throne, the COMMONS attend

I

INTRODUCTION

Topography

> The union of the three powers in the House of Peers is the grandest sight which England can present to the eye of a foreigner....Nothing is wanting to this august assembly but a place answerable to its majesty, a place that might vie with the grandeur and magnificence of Ranelagh. The House of Peers, in which it is held, is a narrow hall of...little extent...The furniture is suited to the simplicity of the place: the four[1] woolsacks and plain benches fill the enclosure; the panels which separate the windows, formed of little panes, are adorned with old tapestry of the sixteenth century, on which is represented the defeat of the invincible Armada. The throne, raised upon a few steps and covered with a canopy, is the only ornament that strikes the eye.

The chamber of the House of Lords, so described by the Frenchman Jean Pierre Grosley, was the old Parliament Chamber in the Palace of Westminster.[2] The building, which was also known as the White Chamber, housed the Upper Assembly of Parliament from the Restoration to 1801, when the Lords removed themselves to the more commodious apartments of the old Court of Requests.[3] The Parliament Chamber

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1. All other contemporary plans, sketches and descriptions of the Parliament Chamber refer to three woolsacks, not four.
2. Grosley, Tour, ii, 191-3. The account was published in 1772.
3. L.J., xlii, 629,636,639; H.L.R.O. Records of the Lord Great Chamberlain, Letters and Papers, i, No.167.

measured about 70 feet long by 27 feet wide,[4] and was, as Grosley implied, of little architectural interest. The high-pitched medieval roof of the building was hidden by a plastered barrel ceiling, in which were placed large dormer windows, the original medieval windows having been bricked up.[5] According to John Wight,[6] an experienced clerk of the House of Lords, the tapestries depicting the defeat of the Spanish Armada of 1588 had been placed there by Oliver Cromwell during the period when the chamber was used by the Commons as a Committee room.[7]

The Chair of State, which alone drew comment from Grosley, was situated at the south end of the hall. Early in his reign, George III had a new throne made, which was upholstered in red velvet and had the royal coat of arms embroidered on the back.[8] On either side of the throne were placed chairs for the princes of the royal blood, a Prince of Wales having the position of precedence, sitting alone on the right-hand of the sovereign. The remainder of the Parliament Chamber was composed of seating accommodation for the members of the Upper House.[9] The red painted benches along the

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4. Calculations are based on Gough Maps 23, f.52. According to Sir Christopher Wren, surveyor-general of the king's works in the late seventeenth and early eighteenth centuries, the dimensions of the Parliament Chamber were 69'7" by 26' 6". (Westminster City Library, Extra-illustrated copy of T.Pennant, Some Account of London, iii (1825), f.105). Sir John Soane, who demolished the old house in 1823, gave its dimensions as 70' 6" by 27' (Westminster City Library, Box 56, No.22 'Plans and Sections of the Prince's Chamber and old House of Lords, 18 August 1823).
5. Colvin, The History of the King's Works, v, 391.
6. Wight held the office of Reading Clerk from 1736 to 1753, and Clerk Assistant from 1753 to 1765.
7. Walpole, (Yale) Correspondence, i, 10-11,13.
8. Kielmansegge, Journey to England, p.138.
9. See infra., p.290; Colvin, History of the King's Works, v, 391.

east wall were reserved for the bishops; those on the west side of the House were for the temporal peers. In the centre of the hall were arranged three woolsacks: that nearest the throne was placed horizontally, while the other two were placed at right-angles to the first. On the uppermost woolsack sat the Lord Chancellor as Speaker of the Lords; the others were intended for the judges and other legal officers of the House.[10] Beyond these was the Table, and a bench for the clerks of the House, between which and the Bar on the north side of the House were arranged cross-benches, providing further accommodation for the temporal peers. Below the Bar, and between it and the north wall of the House, was a space of 16 feet where, on most days, crowded privileged members of the public and of the Lower House in order to observe the proceedings of the Lords.

Few alterations were made to the chamber of the House of Lords between the Restoration and the move to the Court of Requests in 1801. In 1704 a gallery was erected at the lower end of the House to accommodate the lady attendants of Queen Anne when she attended the House. This was demolished in 1711; its one and only replacement had an even shorter existence of four years, from 1737 to 1741.[11] From time to time, defects in the structure of the building were detected and ordered to be repaired by the Officers of the Board of Works.[12]

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10. See infra., p.26.

11. L.J., xxiv, 549,550,555(1735); xxv, 29,86(1737), 571(1741). See also infra., p.333.

12. E.g. In 1719 the roof of the Parliament Chamber was in need of repair, and that of the Painted Chamber was almost collapsing because of the weight of the documents deposited above it. Hence the Lords met in Westminster Hall while repairs were made to the House. (L.J., xxi, 45,48,51,53,66-7). By 1778 the roof was again in a dangerous condition. (H.L.R.O. Records of the Lord Great Chamberlain, Letters and Papers, i, MS.Nos.135,137).

The furnishings of the chamber had also to be renewed periodically.[13] The officer ultimately responsible for the supervision and authorisation of these matters was the Lord Great Chamberlain as superintendent of the royal palaces.

The manner of heating the Parliament Chamber was by a fireplace situated in the middle of the east wall. The rectangular overmantel and its ornamentation was the design of Sir Christopher Wren.[14] The fireplace had at one time held an iron range which had been replaced by a stove; this, however, appears to have been less satisfactory for, on 31 January 1766, the Lords ordered that the Lord Great Chamberlain be requested to arrange that the old heating system be restored.[15] Despite the seemingly inadequate heating provision for a hall of the size of the Parliament Chamber, the majority of contemporary complaints on the subject refer to the excessive heat in the chamber on the occasions that the House was particularly crowded. The Earl of Dartmouth, for example, returned home on the evening of 11 November 1766 suffering from a violent headache which he attributed to 'the intolerable heat of the House' on the first day of the session.[16] The uncomfortable conditions of the House provided some peers with a more than adequate excuse for staying away.[17]

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13. Ibid., MS. Nos.57,58(1744).
14. Colvin, History of the King's Works, v, 391.
15. L.J., xxxi, 254.
16. MSS.North, d.10, f.198. (The letter is incorrectly dated 10 November 1766). The number of peers who attended the House that day was 106. L.J., xxxi, 424. Dartmouth had been First Lord of Trade 1765-6, and was again to serve in the same office from 1772 to 1775 for North's Administration, being appointed Lord Privy Seal in November 1775 (until March 1782). For another example, see B.L.Add.MS.32982, f.113(1767).
17. E.g., ibid., f.138(1767); Add.MS.32966, f.146(1765)

Surrounding the old Parliament Chamber were numerous small rooms used by the various dignitaries and officers associated with the House of Lords. Attached to the east wing of the White Chamber were the rooms of the Earl Marshall, the Lord Treasurer, and the Lord Chancellor. Here, too, was constructed a retiring room for the bishops, who also had their own entrance and exit leading to the landing place at Parliament Stairs, from where they could take a boat to Lambeth or Fulham. Two entrances to the House led from Old Palace Yard: peers could either enter the House of Lords via the small lobby which connected the Parliament Chamber with the Prince's Lodgings or, alternatively, they could pass through the Stone Lobby on the south side of the Court of Requests to the lords' Robe or Waiting Room which lay between the north wall of the House and the Painted Chamber. Between the waiting room and the Stone Lobby lay Black Rod's room, while above the Stone Lobby had been constructed an office for the Lord Privy Seal. The House of Lords' appropriation of these rooms within the Palace of Westminster was complete by the end of the seventeenth century;[18] no further expansion took place until 1762 when the Lords took possession of the Ordnance Office on the west of the Parliament Chamber, and gave instructions for its conversion into Committee rooms, waiting rooms, and a stone staircase for the use of their lordships.[19]

The responsibility for maintaining peace and order within the precincts of the House of Lords rested with Black Rod and his deputies.[20]

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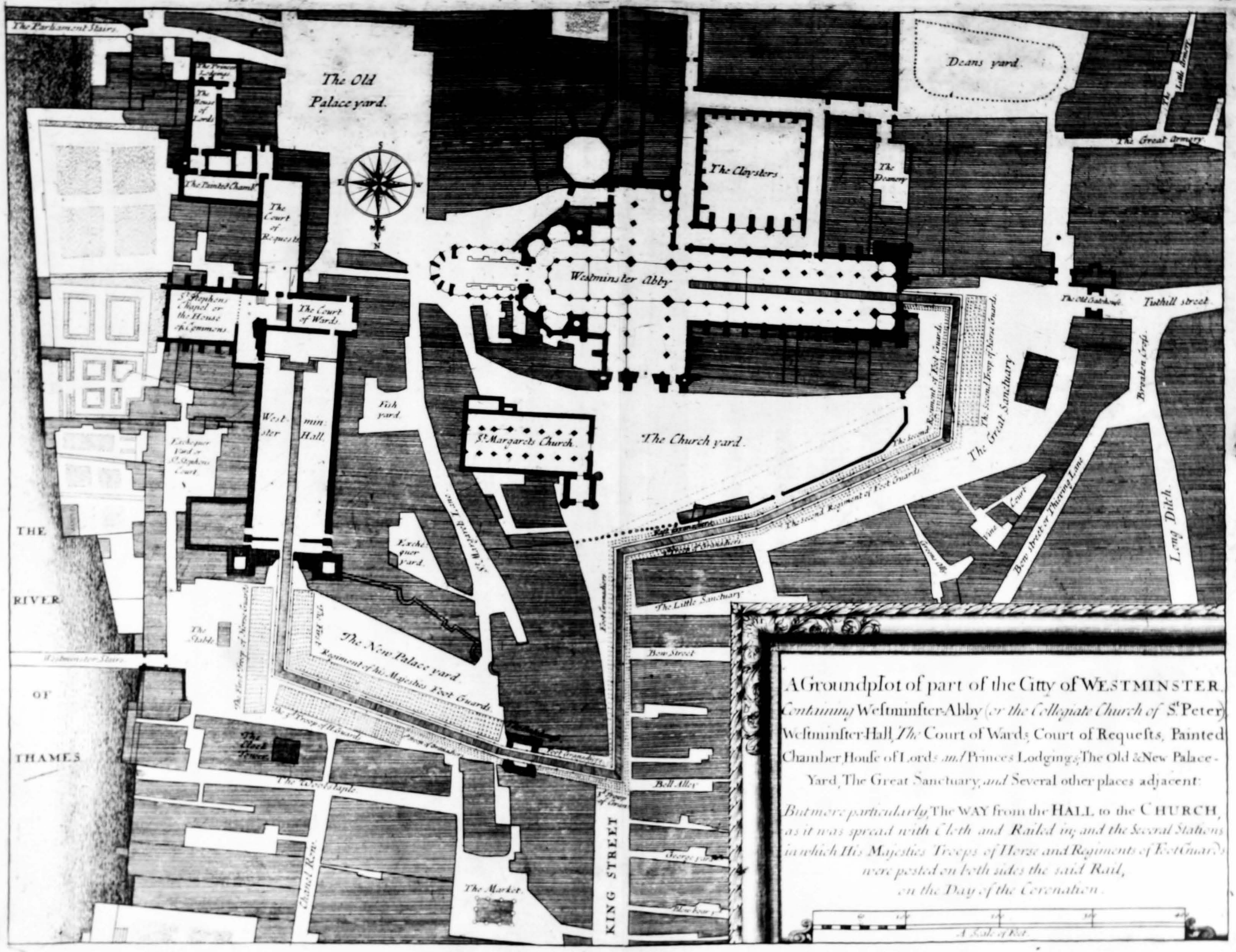
18. Colvin, History of the King's Works, v, fig.32.
19. Fortescue, Corr. of George III, i, 28; L.J., xxx, 250-1,259.
20. H.L.R.O., Historical Collection 251, George Rose's Precedent Book, f.245.



A Groundplot of part of the City of WESTMINSTER,
Containing Westminster-Abby *(or the Collegiate Church of* S^t^ Peter*)*
Westminster-Hall, *The* Court of Wards, Court of Requests, Painted
Chamber, House of Lords *and* Princes Lodgings, The Old & New Palace-
Yard, The Great Sanctuary, *and* Several other places adjacent:

But more particularly, The WAY from the HALL to the CHURCH,
as it was spread with Cloth and Railed in; and the Several Stations
in which His Majesties Troops of Horse and Regiments of Foot Guards
were posted on both sides the said Rail,
on the Day of the Coronation.

A Scale of Feet

Their authority not only extended over the aforementioned rooms but also over other important buildings in the Palace of Westminster, such as the Prince's Chamber, the Painted Chamber, and the Court of Requests. The Prince's Chamber, or the Prince's Lodgings as it was also called, was situated behind the south wall of the Parliament Chamber. It was the venue for the Lords' private or Select Committees, and was also the robing room of the sovereign when he attended on state occasions. In April 1751, the Prince's Chamber was used for the lying-in-state of Frederick Prince of Wales;[21] and when the Earl of Chatham[22] collapsed in the House of Lords during a debate on 7 April 1778, it was to the Jerusalem Chamber, as the Prince's Lodgings was also known, that he was carried to receive medical attention.[23]

To the north of the White Chamber lay the Painted Chamber. Its main Parliamentary function was as the meeting place for conferences between the Upper and Lower Houses of Parliament.[24] Leading from the Painted Chamber towards the precincts of the House of Commons was a passage which was called the Long Gallery. In 1769, proposed alterations at the Commons' end of the gallery caused a dispute between the respective clerks of the two Houses on the question of within whose jurisdiction the gallery lay. The convention that meetings between the Speakers of the two Houses be held there, in the middle

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21. Dodington Journal, pp.112-3.
22. The title bestowed on William Pitt when he was raised to the peerage on 4 August 1766.
23. Walpole, (Yale) Correspondence, xxiv, 370-1.
24. See infra., p.529.

of the 'gallery of communication',[25] suggested shared ownership and responsibility, but the use of the entire length of the passage as a store-room for the papers of the House of Commons implied the ownership of the Lower House.[26] As an additional argument in support of the Commons' jurisdiction, its officials acknowledged the Lords' equivalent claim to the Court of Requests. This building, which in earlier times had been called the Lesser Hall and the White Hall, was situated contiguous to the Long Gallery. Its spaciousness made it a natural choice as the new site of the House of Lords chamber in 1801[27] after the Union with Ireland added a further 28 peers to a House of Lords whose membership was already well beyond the capacity of the Parliament Chamber.

Several of the lobbies and chambers clustered around the House of Lords chamber also served as waiting rooms for the peers and as informal meeting places for members of both Houses. On 20 February 1735, the six lords involved in the disputed election of the Scottish representative peers waited in the Prince's Chamber for the whole of a lengthy and 'very dull debate' on the affair.[28] The same Chamber provided the location for a long conversation between Earl Temple and Charles James Fox on 4 July 1782: the topic of their conversation obviously concerned the leadership of the Ministry, for immediately prior to this, Temple had been told by the Earl of Shelburne[29] himself

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25. Colvin, History of the King's Works, v, 393; see also Harrowby MSS., document 35(q), 23 September 1755.
26. Ley MSS., 63/2/11/1, ff.11-12.
27. The Times, 21 January 1801.
28. H.M.C. Carlisle MSS., pp.152-3; L.J., xxiv, 465.
29. An Irish peer who sat in the House of Lords by his British peerage title of Lord Wycombe.

of his appointment as the head of the new Ministry following the Marquess of Rockingham's sudden death.[30] The Court of Requests, easily accessible to peers,Commoners, litigants from the law courts in Westminster Hall, and the public alike, became a convenient venue for these groups to mingle together. Like the lobbies of the House, it would often be full of patronage hunters and of individuals seeking even greater favours. For example, on 21 February 1716 the Countess of Derwentwater and her companions pleaded with peers in the lobby of the House of Lords to intercede on behalf of her husband and the other lords condemned for treason during the Jacobite Rebellion of 1715.[31] The usual custom of the Lords to allow members of the public within the area of the House, in direct contravention of their own Standing Order that nobles and their attendants only ought to enter the lobbies,[32] greatly increased the task of Black Rod and his fellow officials of keeping order in 'the rooms wherein the lords do retire about the House of Peers, as also in all the avenues into the House'.[33]

Clothes

Contemporary illustrations and descriptions of the House of Lords show that when the monarch sat in Parliament, the peerage attended in full ceremonial dress.[34] Their robes were made of crimson velvet

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30. Buckingham (ed.), Court and Cabinets, i, 50-1. Earl Temple became a member of Shelburne's Government as Lord Lieutenant of Ireland, but was not a member of the cabinet. For another example, see B.L.Add.MS.32982, f.453.

31. Parl.Hist., vii, 282.

32. Standing Order No.43 (23 May 1628).

33. H.L.R.O., Historical Collection 251, George Rose's Precedent Book, f.245.

34. Engraving by L.O.Pine, Gough Maps 23, f.53; see supra., post (iv). O.Millar, The Tudor, Stuart, and early Georgian Pictures in the Collection of Her Majesty the Queen, i, 167.

edged with miniver. The relative ranks of the peerage were indicated by the rows of ermine displayed on the gowns : a baron, being of the lowest degree, had two rows of ermine, and this increased by half a row for each of the higher degrees of viscount, earl, and marquess, with the maximum of four rows of ermine for a duke. [35] In November 1742, however, the Earl of Leicester was told by his lawyer that 'there is no occasion for the lords to appear in their robes, except on a coronation, and that there are now but few that will appear at the House of Lords in their robes: at least three parts in four without robes'. [36] Nevertheless, ceremonial dress continued to be worn on special occasions, such as at impeachments, and upon a peer's introduction to the House. The bishops normally attended in their convocation dress of black gown with white lawn sleeves for both formal and every-day sittings. The Lord Chancellor wore his gown of office [37] and a full-bottomed wig. Lord Hardwicke, after carrying the robes and burdens of the office for almost twenty years,[38] was apparently unrecognizable without them for, at the first levée that he attended after his resignation in 1756, he was snubbed by George II, who later apologised, claiming that his former minister was an unfamiliar sight without his robes and the purse of the Great Seal. [39] When Lord De La Warr was appointed temporary Speaker of the House of Lords in May 1733, he was requested to wear a plain robe of black silk. [40]

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35. Fortescue, Corr. of George III, i, 5.
36. De L'Isle Papers, U 1500/C5/30. Leicester succeeded to the title in 1737, and took his seat on 9 March 1738. He died 7 July 1743.
37. Campbell, Lord Chancellors, i, 28; Statutes of the Realm, iii,431.
38. Hardwicke's term as Lord Chancellor was from February 1737 to November 1756.
39. Campbell, Lord Chancellors, v, 139.
40. H.M.C. Hastings MSS., iii, 16.

Noise

The scene within the Parliament Chamber was rarely, if ever, that prescribed by the Standing Orders of the House, namely of order and silence. State occasions inevitably attracted a large public audience, while interested parties eagerly sought to attend the proceedings of the House on matters with which they were concerned. The business of the House, therefore, would often be conducted against a great deal of background noise, which only added to the difficulty that some peers would already have of hearing, for the barrel ceiling and tapestry-lined walls contributed little to the acoustics of the Parliament Chamber. In December 1720, Lord Chancellor Parker[41] insisted that he be provided with a copy of the King's Speech at the opening of Parliament, despite the fact that he would be standing close to the King, behind the Prince of Wales's chair. He maintained that 'without a copy I shall not be able to do: the noise in the House, and my being behind the King's back making it impossible for me to hear the words from his Majesty's mouth in the House'.[42] By the end of the period, even Parliamentary reporters, enjoying greater freedom to report debates by that time, excused their failure to provide a full account of the proceedings on the Ilmington Enclosure Bill on 30 March 1781 due to the state of extreme disorder which prevailed in the House on that occasion.[43]

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41. Lord Parker was appointed Lord Chancellor in May 1718 and held the post until January 1725. He was created Earl of Macclesfield in 1721.
42. P.R.O., S.P.35/24/21, f.50.
43. Debrett, Parl.Register (2nd.ser.), iv, 226; L.J., xxxvi, 257.

Membership

On the first day of every new session of Parliament, Garter King at Arms placed on the Table in the Parliament Chamber marshalled lists of the membership of the peerage.[44] Not all of those named, however, were members of the House of Lords: minors, lunatics, and Roman Catholics who failed to sign the Test Rolls were denied membership of the House. The Garter's Roll for the Parliamentary session commencing on 14 December 1715 lists 193 names, including the 16 Scottish representative peers. To be deducted from this are 3 officers of state and 2 members of the royal household whose names appear twice, 14 minors, 12 Catholics and 2 peers whose claims were disputed and were thus denied writs of summons. To be added to the remaining total are the lords spiritual, in this case 25 since the Bishop of Durham is already accounted for as Lord Crew. This gives a total membership of 186. By the same method of calculation, it is seen that at the time of the debates on the peerage in 1719, the membership of the House of Lords stood at 195. In 1751, when the Regency question was put before Parliament, the House of Lords numbered 191 — one less than at the first Parliament of George III in November 1760. By the time of the debates on the East India Bill of December 1783, the membership of the Lords had increased to 224, as a result of the peerage creations of 1776.[45]

The temporal contingent in the House of Lords was composed mainly of English hereditary peers. Many of these ranked among the wealthiest men in the country, having huge incomes — such as the Duke of Newcastle who, in 1715, received about £32,000 per annum; and possessing palatial residences, such as the Duke of Marlborough's

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44. H.L.R.O. Historical Collection 59, John Relfe's Book of Orders,p.34.
45. H.L.R.O., Garter's Roll, Nos.47,52,82,92,117.

Blenheim, and the Duke of Devonshire's Chatsworth.[46] Others were far less wealthy, while several depended on charitable grants or pensions from the Crown.[47] All, however, once they were of age, and providing they were Protestants, were entitled to sit in the House of Lords.

Also possessing English or British titles were a few Irish peers, who thereby were entitled to a place in the Westminster House of Lords as well as in their own Irish Upper House in Dublin.[48] These peers were known officially at Westminster by their English titles only : hence, when several inscribed both their Irish and English titles to the Test Roll at the commencement of the new Parliament on 12 May 1768, notice of the mistake was immediately taken by the House, and the peers concerned were granted leave to amend the document by erasing their Irish titles.[49] This situation often meant that Irish peers enjoyed lower precedence in the Westminster Parliament than that which their Irish titles entitled them to, and which was accorded to their English counterparts : for example, the Earls of Bessborough, Egmont, and Shelburne were called to Westminster as Lords Ponsonby, Lovel and Holland, and Wycombe, respectively,[50] and consequently they sat on the barons' benches in the House of Lords. This inferior status was acutely resented by the Irish, who periodically questioned the

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46. Speck, Stability and Strife, p.35.
47. Namier, Structure of Politics, p.222.
48. Several English and British peers also possessed junior Irish peerages. For example, the Marquess of Rockingham was also Baron Malton and Earl Malton, co.Wicklow. Such peers had a right to attend the Irish House of Lords, but in practice did not often do so.
49. L.J., xxxii, 151.
50. The second Earl of Egmont was created Lord Lovel and Holland on 7 May 1762. The Earl of Bessborough was made Lord Ponsonby in the British peerage on 12 June 1749.

arrangement.[51]

Dignity, honour, precedence, and status were issues which concerned the peerage as a whole. There also appeared from time to time signs of jealousy and rivalry within the peerage, between the representatives of the ancient noble families and the newly ennobled. In the debate of 25 May 1717 on the motion to appoint a date for the trial of Robert Harley, Earl of Oxford, it seemed to several peers present that Lord Coningsby's main concern was with safeguarding the privileges of the House of Commons in the affair. Coningsby, before being granted a British title in 1716, had managed Oxford's impeachment for the Lower House.[52] He was answered by Lord North and Grey, who condescendingly remarked 'That that noble Lord had been so long among the Commons, that he appeared to be very well acquainted with, and be much concerned for, their privileges; but that he must give leave to those who were born peers to take care of their own'.[53] George Grenville alluded to the personal and social rivalries in the House of Lords during the negotations for forming his Administration in March 1763. His predecessor, the Earl of Bute, recommended William Petty, Earl of Shelburne,as Secretary of State but Grenville argued that the appointment would cause resentment among junior offic -holders in the Commons and Lords, who would thus be superseded, particularly so in the Upper House.[5]

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51. E.g., H.M.C. Egmont Diary, i, 409-12; cf. ibid., ii, 456. This is the diary of the first earl, who was M.P. for Harwich 1727-34.

52. Thomas Coningsby was created Lord Coningsby of Coningsby on 18 June 1716. An Irish peer since 1692, he had been elected to serve as M.P. for Leominster in the Parliaments of 1679-81, 1685-87, 1689-1710, and 1715-16.

53. Torbuck, Debates, vi, 479. William, Lord North and Lord Grey, was a member of the House of Lords since January 1699. In October 1722 he was imprisoned in the Tower on suspicion of complicity in the treason plot of that year. He died at Madrid in 1734.

54. Fitzmaurice, Shelburne, i, 169-70.

the objections ... will arise from Lord Shelburne's youth, his inexperience in business, never having held any civil office whatever, and from his situation and family, so lately raised to the peerage,[55] however considerable both may be in Ireland.

The envy and jealousy of the old peers, many of whom are already trying to band together, must naturally be excited to the highest pitch by a distinction, of which in most of its circumstances, there is I believe no example in our history. The pretensions of such as now hold offices of the second rank in the House of Lords will be raised to a degree that cannot be gratified, and their disgust and disappointment will either break out into an open resistance, or at least prevent any cordial support....

You will consider how far this appointment will meet with the cordial approbation of all or any of these from whom, in that House, this system must expect assistance; from Lord Halifax, Lord Egremont, Lord Chancellor, Lord Mansfield; from Lord Egmont, Lord Marchmont, Lord Denbigh, etc.; from the Duke of Bedford, Lord Gower and all their friends. I know not their sentiments, and therefore cannot decide upon them; but as far as my own uninformed judgement goes, I cannot persuade myself that many of these, even of the most congenial, would bear Lord Shelburne's being put at once over their heads with satisfaction or content.

There was also in the House of Lords one category of nobles who did not receive a writ of summons to Parliament by virtue of their rank in the peerage, nor was their membership of the House hereditary.

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55. The Irish barony of Shelburne was created in 1688, and made an earldom in 1719. John Petty, the second Earl, was created Lord Wycombe in the peerage of Great Britain on 20 May 1760. His son, William Petty, inherited the titles in May 1761.

The Act of Union of 1707, while reserving for the peers of Scotland all the privileges enjoyed by their English counterparts, stipulated that the right to sit in the Westminster Parliament should be enjoyed by only sixteen representative Scottish peers, who were to be elected from among their own ranks.[56] The sole qualification of eligibility for election was to be descended from ancestors who were peers at the time of the Union. A certificate bearing the names of those elected was delivered by the Clerk of the Crown in Chancery on the opening day of a new Parliament, and read to the House.[57] If the sitting of Parliament for business was postponed to a later date, the certificate would again be read on the first day of the session.[58] The precedence of the Scots was also ensured by the Act of 1707, namely, that they should sit below the peers of England, that is, those created before the Union, but higher than the peers of Great Britain created after 1707.[59] Nevertheless, the basis of their membership of the House of Lords was a grievance to the Scottish peers throughout the period, as it demeaned the dignity of their peerage and, furthermore, was the cause of much of the contempt in which they were held by the English lords.[60] The proposed Peerage Bill of 1719 would have abolished the elective peerages and empowered the Crown to nominate twenty-five Scottish hereditary peers.[61] After its failure, no further change was made or proposed in the system until the abolition

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56. Statutes of the Realm, viii, 572, article xxii.
57. E.g., L.J., xx, 22(1715); xxxii, 146(1768); xxxvi, 178(1780).
58. E.g., ibid., xxiv, 430,437(1734,1735); xxx, 102,107(1761).
59. Statutes of the Realm, viii, 572-3, article xxiii; e.g., L.J., xxvii, 140,143-4(1747); xxxiv, 266-7(1774).
60. Turner, 'The Peerage Bill of 1719', E.H.R., xxviii (1913), p.252-3, n.84.
61. H.M.C. Portland MSS., v, 578.

of Scottish elective membership of the Upper House in 1963.[62]

The Scottish representative peers had a bad reputation among contemporaries on two counts. Firstly, they had a high rate of absenteeism from Parliament; the distance involved and the difficulties of travelling were sufficient to deter many from making the journey to Westminster. For example, nine only were present in the pre-Christmas session of Parliament 1783 to take part in the proceedings on the India Bill, though another six voted by proxy.[63] Prior to the 1774-75 session of Parliament, Lord North's[64] Cabinet resolved to be rid of those who had failed to attend the House regularly during the previous sessions and to nominate others in their place.[65] One representative peer, however, who despite his infrequent attendances was excused from this axe, was the Earl of Bute,[66] who, claimed Lord North, as 'a dowager First Lord of the Treasury has a claim to this distinction'.[67]

This incident also indicates the other cause of the Scots' unpopularity, for they had the reputation of being the puppets of the

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62. Bond, Guide to the Records, p.21. The 28 Irish representative peers who sat in the House of Lords after 1800 were elected for life.

63. Debrett, Parl.Register (2nd.ser.), xiv, 107-108; L.J., xxxvii, 20,25,26-7.

64. Lord North, First Lord of the Treasury from January 1770 to March 1782, sat in the House of Commons as M.P. for Banbury (1754-1790). He succeeded his father as Earl of Guilford, 4 August 1790.

65. H.M.C. Sutherland MSS., p.209.

66. The Earl of Bute was a representative peer between 1737 and 1741, and from 1761 to 1780. He served as Secretary of State for the North, March 1761 to May 1762, and as First Lord of the Treasury from 1762 to April 1763.

67. H.M.C. Sutherland MSS., p.209. Another Scot who was retained in 1774 was Lord Abercorn. Donne (ed.) Correspondence of George III with Lord North, i, 209.

government. Their poverty, compared to many of their fellow peers, and their general disinterest in English affairs meant that they usually voted with the ministry which nominated them and to which they looked for patronage and preferment. By the mid-eighteenth century, the subservience of the Scottish lords had become almost proverbial, and they presented a block vote to be relied on by whichever political faction succeeded in gaining office.[68]

Much of the scorn and criticism directed towards the Scottish peers was also levelled against the spiritual members of the House. The episcopal bench was composed of two archbishops and 24 bishops. They were considered to be lords of Parliament only,[69] not being peers of the realm, and their right to sit in the House of Lords rested on the King's writ summoning them to advise him in Parliament.[70] The bishops, like the Scots peers, were regarded by contemporaries as the henchmen of the King and his ministers; their motivation was simple, namely, the hope of promotion to a richer see. The value of the bishoprics varied greatly: in 1760, the Archbishop of Canterbury received £7000 per annum; the sees of Durham and Winchester were worth £6000 and £5000, respectively, which was higher than the annual income of the Archbishop of York at £4,500. Most bishops received between £1000 and £3000 a year, though some were considerably poorer, such as Bristol, whose annual income was £450.[71] After his translation from the bishopric of Lincoln to the most senior see of London in 1723, Edmund Gibson was one of Sir Robert Walpole's staunchest allies in the

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68. Franklin Papers, xxi, 464.
69. Standing Order No.44 (14 December 1621).
70. H.M.C. Egmont Diary, i, 443.
71. Speck, Stability and Strife, p.36.

Lords, and controller of ecclesiastical patronage. The episcopal bench as a whole were particularly sensitive to the fluctuating trends of favour at Court; hence, when several of the court peers turned against Walpole in 1733, the Bishop of Litchfield was so 'frighte[ne]d at the universal discontent against the Excise [Bill] ... I [Egmont] found by him that he and divers other bishops are like to vote against it when it comes into their House'. [72] Following the Opposition's success on 3 May 1733 in securing an inquiry into the sale of the South Sea Company directors' estates, Crown and Ministers canvassed regular and occasional supporters in the Lords. Queen Caroline summoned Bishop Hoadley of Salisbury and reprimanded him for his absences that winter in the House. At the crucial divisions of 24 May and 1 June, Hoadley was in his place and voted for the Walpole Administration. [73]

Contemporary comments on the general subservience of the episcopal bench to the Crown were common throughout the period. On 16 February 1766, the Archbishop of Canterbury wrote to the Duke of Newcastle to assure him that when the Bill for the Repeal of the Stamp Act came before the House of Lords, 'the Bishop of Winchester will vote as he understands the King to be inclined : and so will other bishops'. [74] At the division on another measure introduced by the first Rockingham Administration, only the Bishops of Carlisle and Bangor voted in the minority on 28 May 1766 against committing the Window Tax Bill. [75] In May 1774 the North Ministry initiated

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72. H.M.C. Egmont Diary, i, 356.
73. Hervey, Memoirs of George II, i, 233-6; L.J., xxiv, 277,291.
74. B.L.Add.MS.32974, f.17.
75. Grenville Papers, iii, 242.

in the House of Lords a Bill for the Government of Quebec, which also bestowed on the Roman Catholic majority of the province the right to freedom of worship. Commons' amendments to the Bill meant that it had to be debated once more in the Lords. In the division, the only bishop who voted against the Bill was Shipley of St.Asaph, but a few others abstained. Among these was Bishop Terrick of London, who excused himself on the grounds that he had company for dinner. 'An excellent excuse for a bishop when the interests of Protestantism were at stake', observed Horace Walpole, especially since his guest was the Bishop of Coventry and Litchfield, brother of the Prime Minister, who would be sure to 'stay out the debate and vote for popery'.[76] Walpole continued in this satirical vein to comment critically on the role and motivation of the bishops.[77]

> Terrick and the others who withdrew were too good courtiers and too bad Christians to vote against the Bill. Dr.Cornwallis, the Archbishop [of Canterbury], too inoffensive a man to give such scandal, walked out to vote at the head of the majority, and was followed by Bishop North [of Coventry and Litchfield] the Minister's brother, who was also waiting for the Archbishopric of York - for Dr. Drummond was dying - and for Canterbury, too, when he saw the Bishop of London retire.

Most divisions of the House of Lords in the eighteenth century would support the comment made by Henry St.John, later Viscount Bolingbroke, in January 1712 that the bishops 'if a vote should be proposed to unbishop them, he believed they would concur in it'.[78] The political

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76. Walpole, Last Journals, i, 355.
77. Ibid.
78. Trumbull Add.MSS.136/3, Ralph Bridges to Sir William Trumbull, 18 January 1712.

conduct of the episcopal bench did not escape comment in the debates of the Upper House, despite the rule against making personal observations on fellow members.[79] It was reported to the Earl of Essex that the debate on the Mutiny Bill, 6 March 1733, had been 'pretty smart and the clergy happened to be roasted on both sides'. The Presbyterian Duke of Argyll,[80] known for his lack of affection for the bishops, had remarked that the country was 'more in danger from an army of black coats[81] than of red coats', and he attributed the misfortunes of the reign of Charles I to the advice offered by his episcopal counsellors. Lord Carteret then joined in the attack by strongly implying a close comparison with the role of the Swedish bishops in the upheavals of the northern kingdom.[82] Both lords were again among the most vociferous of the peers who abused the bishops during the debates on the Mortmain and Quakers Tithes Bills in May 1736.[83]

In return for their unerring support in Parliament, the bishops looked to successive ministries for support and assistance on various ecclesiastical issues. The advantages of an effective co-operation between church and state were explained by Bishop Gibson to the Walpole Administration in an attempt to end the 'unfavourable treatment which all matters relating to the church and clergy have met with of

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79. Standing Order No.15 (13 June 1626).
80. Argyll (1703-43) was known at Westminster first as the Earl of Greenwich (created 1705) in the English peerage, and later as Duke of Greenwich (created 1719).
81. A reference to the bishops' convocation dress.
82. B.L.Add.MS.27732, f.131. Lord Carteret took his seat in the House of Lords on 25 May 1711. During his long and distinguished political career he held several offices in government, and was a leading opponent of Walpole's Administration between 1730 and 1742. In 1744, on his mother's death, he inherited the title Earl Granville. He died in 1763.
83. H.M.C. Egmont Diary, ii, 269,271; Hervey, Memoirs of George II, ii, 268-72.

late in Parliament, and especially in the House of Commons'.[84] The major cause of the grievance was that the main perpetrators of this attitude were those who enjoyed favour at court, and he issued a warning that if this conduct continued 'the Ministry will find it a difficult work to keep them and us upon the same bottom much longer'.[85] In May 1736, Sir Robert Walpole committed a fundamental mistake in not consulting the spiritual lords before adopting the measure known as the Quakers Tithes Bill.[86] The bishops regarded the Bill as an attack on the established church under the guise of concessions to the Quakers and, with the assistance of the law lords Lord Chancellor Talbot and Lord Hardwicke, they successfully obstructed its commitment.[87] In May 1748, the bishops took strong objection to the clause relating to clerical orders in the Bill for Disarming the Scottish Highlands,[88] and the Government's acquiescence in their discontent was demonstrated in the rejection of the clause at the Committee stage on 10 May. On this occasion, however, the necessity of avoiding a confrontation with the House of Commons resulted in a compromise, several of the bishops

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84. Gibson MS.5209 [undated]. The conflict between the bishops and the House of Commons came to the fore in 1731. At the second reading of the Pension Bill on 20 February 1731 the Bishop of Bangor in particular made an inflammatory speech against the measure, which was rejected by the Lords. Consequently, on 4 March 1731, the Commons debated a motion for leave to bring in a Bill to prevent the Translation of Bishops. This, too, was rejected, but the motion was widely regarded as the Commons' retaliation for the opinions voiced by Bangor and approved of by his fellow bishops, and which were considered to have caused the loss of the Pension Bill. HA 13211 (Hastings MSS.), Strafford to Huntingdon, 4 March 1731; Parl.Hist., viii, 844-54,857-8.

85. Gibson MSS. 5209.

86. Ibid., MS.5304.

87. H.M.C. Carlisle MSS., p.172. The division figures were: Contents 35, Not Contents 54.

88. B.L.Add.MS.32715, f.32.

agreeing to be absent when the Committee's report was received on 11 May, thus enabling the Ministry to reinstate the offending clause.[89] Lord North's Government made no secret of its plans to take the side of the bishops in the House of Lords against the Protestant Dissenters Bill of 1772. The motion on 19 May to commit the Bill was rejected by a huge majority of 102 votes to 27, the episcopal bench being well represented.[90]

Privilege

All the members of the House of Lords enjoyed numerous rights and privileges which were embodied in the Roll of Standing Orders of the House. For example, only the peers themselves were to have their heads covered inside the Parliament Chamber before the House was declared to be in session.[91] Nobles and bishops alike had the right to answer legal examination on their honour and not on oath, whether they be the plaintiff or the defendant, and in whatever court of law.[92] Furthermore, no lord was to answer any accusations against him in the House of Commons, either in person or by counsel, or in writing, upon penalty of being taken into custody by Black Rod or be committed to

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89. Coxe, Pelham Administration, i, 387; L.J., xxvii, 233,234-5. The division in the Committee of the Whole House on 10 May 1748 was 28 for the clause and 32 against, while at the report stage next day the vote in favour of rejecting the Committee's amendment was 37 to 32. Sainty and Dewar, Divisions.

90. Fitzmaurice, Shelburne, i, 441-2, which claims that all 26 bishops were present. The Journals name 21 as attending that day. L.J., xxxii, 416,419.

91. Standing Order No.10 (1621).

92. Standing Order No.70 (6 May 1628); H.M.C. Egmont Diary, i, 277.

the Tower.[93] Membership of the Upper House also granted every lord freedom from imprisonment during the sitting of Parliament, except on charges of treason, felony, and failure to give assurances for keeping the peace;[94] it also protected them from seizure of their goods and possessions.[95]

In 1708 the Lords decided that the privileges of Parliament ought also to extend to the eldest sons of peers who were members of the House,[96] though by earlier Orders of the House these were not shared by peers who were under age, nor by peeresses, nor the widows of peers.[97] The privilege of peers' servants to protection from arrest in civil actions was particularly open to abuse. The reasoning behind the privilege was that lords 'should not be distracted by the trouble of their servants from attending the serious affairs of the kingdom'.[98] In 1624 servants' privilege was limited to 'menial servants' of peers and those employed 'about their estates as well as their persons'.[99] Early in the eighteenth century, the House of Lords took steps to put an end to the issue and illegal sale of written protections. The Standing Order of 7 May 1712 declared

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93. Standing Order No.50 (20 January 1674). Francis Atterbury, Bishop of Rochester, cited this Standing Order in his petition on 29 March 1723 against having to answer charges against him in the Bill of Pains and Penalties then being deliberated in the Commons. The Lords, however, resolved that he was free to make his defence in the Lower House. L.J., xxii, 133-4. Compare the controversy for calling peers as witnesses to the House of Commons in 1768; see infra., p.550.
94. Standing Order No.49 (18 April 1626).
95. Standing Order No.69 (8 May 1628).
96. L.J., xviii, 345. Standing Order No.41 (26 January 1708).
97. Standing Order No.76 (21 February 1693).
98. Standing Order No.65 (28 May 1624, amended 22 June 1715).
99. Ibid.

all extant protections to be void and prohibited their use in the future.[100] Continued violation of this rule led to a new Standing Order in February 1724 instructing all law officers to disregard protections as being in contempt of the authority of the House.[101] Hence, in January 1725, the Earl of Suffolk was committed to the Tower for contravening the rules about written protections and for bringing 'dishonour [on] the House'.[102] Thereafter, the granting of protections and abuse of the privilege gradually declined. In February 1754, the Public Advertiser reported the arrest by Black Rod of two men who had forged protections in the names of the Earls of Breadalbane and Crawford,[103] but when the sheriffs of London, Middlesex, and Westminster were called upon to produce lists of the written protections in their possession in November 1754, there were none to be declared.[104]

Peers did not have special privileges in any of the legal processes associated with Parliament: for example, they were not to benefit from the privilege of Parliament if they were appointed trustees in a private cause;[105] similarly, the privileges could not be exploited to obstruct the proving of a will.[106] No lawyer acting on behalf of a peer was to be allowed privilege of Parliament,[107] and it was not a breach of a peer's privilege if a suit was filed against

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100. Standing Order No.67 (7 May 1712).

101. Standing Order No.116 (29 February 1724).

102. Timberland, History, iii, 419; L.J., xxii, 391.

103. The Public Advertiser, 12 February 1754. Breadalbane was a representative peer in Parliament from 1752-68 and 1774-80. Crawford succeeded to the earldom in 1749.

104. L.J., xxviii, 287,288.

105. Standing Order No.74 (12 November 1685). For a discussion of this point, see also B.L.Add.MS.22263, ff.47-8.

106. Standing Order No.75 (29 April 1699).

107. Standing Order No.66 (24 March 1697)

him during a session of Parliament.[108] The privilege of Parliament, therefore, did not place peers above or beyond the law: it did not protect a peer from prosecution for the wrongful execution of a public office.[109] In 1763, after the North Briton case, both Houses declared that privilege of Parliament did not extend to libel.[110] Finally, neither the privilege of the peerage nor of Parliament gave peers immunity against a writ of habeas corpus.[111] This resolution of the House in June 1757 was the climax to an affair involving Earl Ferrers who, three years later, was to be tried by his peers and executed for the murder of his steward.[112] The legal standing of a peer vis à vis a writ of habeas corpus was first raised in the Upper House on 7 February 1757.[113]

> In the House of Lords, Lord Mansfield moved your lordships that Earl Ferrers, who has been beating, and burning, and shooting at his wife, may be, though a peer, amenable to the justice of the Court of King's Bench; and their lordships came to a resolution that a peer must answer a Lord Chief Justice's warrant in a different manner from that which Lord Ferrers has hitherto done, which was by shooting at the officer who came to serve it upon him.

If a peer wished to lodge a complaint of a breach of privilege, he had to do so on oath at the Bar of the House. If the charge was not substantiated, the fees and costs of the person accused were to

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108. Standing Orders No.72 (3 July 1678) and No.73 (14 December 1696).
109. B.L.Add.MS.35878, f.313.
110. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.37; L.J., xxx, 426.
111. Standing Order No.125 (8 June 1757).
112. See infra., p.191.
113. Bedford Corr., ii, 235-6; L.J., xxix, 36. Mansfield was Lord Chief Justice of the Court of King's Bench.

be paid by the peer.[114] In 1720 a new Standing Order stipulated that complaints of a breach of privilege committed in Ireland would be examined on receipt of a written affidavit, which would be sufficient to cause the offender to be taken into custody.[115] The peers' privileges were safeguarded by another Standing Order of the House which made it necessary for a peer either to affirm personally in the House of Lords or send a written declaration of his willingness to waive his privilege on any issue.[116]

Servants of the House

Also officially present in the Parliament Chamber during sittings of the House of Lords were persons known as the attendants and officials of the House. In the first of these categories stood the judges. They were summoned by writ to Parliament,[117] though there was no procedure for the return of their writs, as was the case with the peers.[118] The House of Lords had taken steps to regularise the seating accommodation of its servants in 1621 by resolving that the judges and any King's Counsel present in the House should be seated on the woolsacks.[119] With regard to the former, it was established in the first half of the eighteenth century that this privilege was reserved for English judges only. In March 1737, the Lords decided that the Scottish judges who were desired to attend

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114. Standing Order No.78 (11 January 1700).
115. Standing Order No.110 (3 June 1720); L.J., xxi, 343,346.
116. Standing Order No.120 (22 March 1731).
117. For an example of the writ, see F.D.MacKinnon, 'A writ of summons to Parliament', Law Quarterly Review, lxii (1946), p.32.
118. Almon, Parl.Register, x, 151; see infra., pp.283,285.
119. Standing Orders Nos. 4 and 5 (1621).

to give evidence relating to the trial of Captain Porteous in Edinburgh in 1736, ought not to be summoned to Parliament by writ and they were not, therefore, entitled to sit on the woolsacks. Nor were they accorded the distinction of being heard from the Table, but stood at the Bar of the House like all other witnesses.[120]

The judges and any members of the Privy Council summoned to attend shared the privilege of being allowed to cover their heads in the presence of the peers, but this, although a formality, would only be done when the Lord Chancellor signified to them that the House gave them leave to do so.[121] The King's Counsel present were to remain uncovered.[122] The judges were not members of the House of Lords and, as such, had no voice in the House. Their function was to occasionally act as messengers of the Lords,[123] and to give expert advice on points of law, though no opinion could be given unless formally asked for.[124] The judges were also expected to fulfill their judicial duties in the law courts, but the proximity of Westminster Hall to the Parliament Chamber meant that this was not too unreasonable and arduous a task. Furthermore, it was a long-established convention of the Lords that two judges only, by rotation, would be on duty daily at the House, but all, or those of a particular court only, could be summoned to attend at any time.[125] By 1778 it was being asserted by the Lord Chancellor, Earl Bathurst, that the judges

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120. Hervey, Memoirs of George II, iii, 121-1; L.J., xxv, 99,100.
121. Standing Orders Nos. 4 and 6 (1621).
122. Standing Order No.5 (1621).
123. See infra., pp.526-7.
124. Harrowby MSS., document 35(q), [20] November [1754] ; the entry is incorrectly dated 19 November.
125. B.L.Add.MS.35446, f.16(1739).

were never present at debates of the House unless specifically summoned.[126] This statement occurred in the debate of 27 January 1778 on the Earl of Abingdon's motion to summon the judges in order to seek their opinion on the legality of raising troops by private subscription without the consent of Parliament.[127] In the course of his speech, Abingdon claimed it was the right of any one lord to call for the opinion of the judges.[128] The sense of the House, however, was that the attendance of the two judges supposed to be on duty, or the attendance of the whole bench, could only be ordered on the unanimous or majority decision of the whole House.[129] It was also the practice of the Lords that the judges could only be consulted for their opinion when the wording of the questions to be put to them had been agreed upon, and these moreover had to be based on facts which had already been proved to the House.[130] Not all peers, however, considered the judges to be the supreme authority on legal and constitutional matters: the Earl of Shelburne, while supporting Abingdon's motion in 1778, concluded his speech with an eulogy on the legal competence of the peers themselves.[131]

> ...few questions come before this House of which your lordships are not as competent to decide as the judges. In grand national points I shall never be directed by the opinion of lawyers, nor will I go to Westminster Hall to inquire whether or not the constitution is in danger.

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126. Almon, Parl.Register, x, 146. Bathurst was appointed Lord Chancellor as Lord Apsley in January 1771. In 1775 he inherited the Earldom of Bathurst. His tenure of the woolsack lasted until June 1778.

127. L.J., xxxv, 280-1.

128. Almon, Parl.Register, x, 146.

129. Ibid., pp.146,150; Harrowby MSS., document 35(q), 19[20] November [1754]. e.g., L.J., xxi, 34,37(1718-19); xxiv, 183,186(1733). The close divisions faced by the Chatham Administration on 22 and 26 May 1767 were held on this very question; see infra., p.277.

130. Almon, Parl.Register, x, 146; Walpole, Memoirs of George III, ii, 85; e.g., L.J., xxxi, 173,174(1765).

131. Parl.Hist., xix, 627.

Among the most important officials of the House of Lords were the clerks of the Parliament Office, whose basic duty was 'to enter and take account of what they [the House of Lords] do daily'.[132] The Office came under the supervision of the Clerk of the Parliaments who was appointed by letters patent under the Great Seal,[133] and was granted for life. For most of the eighteenth century, the post was held by absentees who, nevertheless, received a lucrative income from the fees on private and judicial business in the House, and from the power of patronage that accompanied the office.[134] Nevertheless, in the course of the eighteenth century the House of Lords gradually but increasingly asserted its own authority over the appointment of its officers by mediating in the various disputed appointments made by successive holders of the senior post, and thereby succeeded in circumscribing the patronage power of the Clerk of the Parliaments.[135] It was as a result of one such incident in 1724 that the House resolved that no clerk could be suspended or removed from office without its leave.[136]

The functions originally performed by the Clerk of the Parliaments were fulfilled by his two deputies. The senior of these was the Clerk Assistant whose duties included taking the minutes of proceedings of the House and maintaining the records, as well as officiating in the place of his superior and affixing his signature to documents. The junior of the deputies was the Reading Clerk who, as his title implies,

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132. Harrowby MSS., document 35(q).

133. B.L.Add.MS.35878, f.261 (document, point 1).

134. Ibid. (document, points 2 and 4). See also George Rose's campaign to secure the appointment, Harcourt, Rose Diaries, i, 22-3,25-6.

135. E.g., L.J., xxii, 243,250,253,256(1724); xxviii, 6,9,10,13(1753); xxx, 420,446,514,517-19(1763). For a fuller account of the Office of Clerk of the Parliaments and the limitation of its patronage, see Sainty, Parliament Office.

136. Standing Order No.115 (10 February 1724)

read all documents publicly in the House and attended as clerk to the private Committees.[137] Below them were the posts of the Clerk of the Journals and Copying Clerk. The former was responsible for compiling the journals of the House, while the latter supervised the copying of acts of Parliament, appeals, and other documents,[138] and from the fees on which,the Clerk of the Parliaments derived a steady income.[139] It was the acknowledged practice of all these officers to employ clerks or servants of their own, to assist them in the execution of their duties.[140]

Apart from their official tasks, the more experienced clerks also provided an invaluable service as a reliable source of information concerning the procedures of the House. Earl Temple, having attacked on 3 December 1755 the Newcastle Ministry's subsidy treaties with Russia and Hesse-Cassel while moving for copies of similar treaties of an earlier period, then consulted Joseph Wight, the Clerk Assistant 'with respect to the form and orders of the House, to know how he can have another day's fight at them'.[141] Similarly, in June 1767, Newcastle, now the veteran politician of the Opposition, 'consulted some gentlemen very knowing in order' as to what means he and his colleagues might take to oppose the East India Company Dividend Bill.[142]

The House of Lords also had officers empowered 'to execute their orders, viz. the [Gentleman] Usher of the Black Rod with his deputy,

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137. B.L.Add.MS.35878, f.261.

138. Ibid., f.265.

139. L.J., xxii, 627-9; see infra., Appendix II and III.

140. H.L.R.O., Committee Minute Books, H.L., 13 December 1763.

141. Bedford Corr., ii, 176-7; L.J., xxviii, 438,443.

142. B.L.Add.MS.32982, f.217 (2 June 1767). For an account of the Lords' proceedings on the Bill, see Brooke, Chatham Administration,

and people under him'.[143] Black Rod was the senior official responsible for maintaining control and order in the area surrounding the House of Lords, and for taking custody of offenders.[144] He, or his deputy, was required to be in constant attendance in the Parliament Chamber, for whom a seat was provided next to the peers' benches but below the Bar of the House. Black Rod was assisted, officially, in preserving the secrecy and privacy of the Lords by eight doorkeepers whose duties were defined as 'to attend the doors and secure the free passage of the lords, and prevent others from intruding'.[145] All the peers' servants and the assistants and officers of the House of Lords were excluded from impressment by an Act of 1640.[146]

Procedure

The procedure of the House of Lords was governed mainly by convention and by the rules which were first written down and acknowledged as Standing Orders in 1621. Most of the peers who were actively engaged in the business of the House probably possessed private manuscript or printed versions of these Orders for their own use.[147] Conformity to the rules and forms of procedure was, however, more lax in the House of Lords than in the Commons, for their enforcement lay not with the Lord Chancellor as Speaker of the House but within the control of the peers themselves. Despite this, the proceedings and debates of the Lords remained far more decorous in character than those of the Lower House of Parliament, mainly because

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143. Harrowby MSS., document 35(q).
144. E.g., L.J., xx, 112(1715); xxxii, 575(1770).
145. Harrowby MSS., document 35(q).
146. Ibid., document 35(o).
147. E.g., B.L.Harley MSS. 6419-22.

of the peers' paramount concern with civility and the preservation of their dignity. The smaller membership of the House was also a contributory factor. Scenes of chaos and disorder within the House were few, and when they did occur they were usually due to external factors. For example, the Lords' proceedings on 2 June 1780 were interrupted by the effects of the Gordon Riots. All peers entering the House after the day's business had begun showed signs of having been accosted by the mob : wigs were dishevilled, gowns were torn, and articles of personal property had been stolen. Parliamentary conventions and procedures were all ignored as, in a scene of disruption and excitement, the outraged peers shouted for sending for the magistrates, or the military, or for an adjournment of proceedings.[148]

Contemporary Opinion

During the eighteenth century, the House of Lords suffered a considerable deterioration in the respect in which it was held by contemporaries. This was already evident in the vast amount of polemical writing which appeared in response to the Peerage Bill of 1719;[149] but nowhere did it figure more significantly than among the leading politicians of the day, including those who were members of the Upper House. In 1740, the Earl of Chesterfield was repeating a popular saying when he called the House of Lords 'a hospital for retiring ministers or a sanctuary for guilty ones'.[150] This remark

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148. Almon, Parl.Register, xv, 359-366. See also the incident of 10 December 1770; infra., pp.330-1.

149. See Turner, 'The Peerage Bill of 1719', E.H.R., xxviii (1913), p.250.

150. B.L.Add.MS.6043, f.25.

might well be applied to two new members of the House in 1742. When William Pulteney was introduced as the Earl of Bath on 15 July 1742 he was immediately greeted by his old Commons' rival, Sir Robert Walpole, now the Earl of Orford, with the words 'Here we are, my Lord, the two most insignificant fellows in England'.[151] This judgement on the political value of membership of the Upper House was shared by Henry Fox who, when pondering in April 1763 as to whether or not to take a peerage, assured a friend that the 'perfect tranquillity you wish me ... can only be had in the House of Lords, the world forgetting, by the world forgot'.[152] Horace Walpole, who throughout his life had shown complete antipathy to the Upper Assembly, resolved never to take the seat in the Lords which the earldom of Orford that he inherited in 1791 entitled him to — a resolution that he kept.[153]

A completely contrary view of the importance of the House of Lords fell from the lips of peers in debate, however. One such instance was part of the Earl of Shelburne's speech on 8 April 1778 while speaking to the Duke of Richmond's motion on the State of the Nation.[154]

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151. Lyttelton Memoirs, i, 209. Walpole had been created Earl of Orford on 6 February 1742, and was introduced on the eighteenth. L.J., xxvi, 55,158.

152. Fitzmaurice, Shelburne, i, 155. Fox was created Lord Holland on 16 April 1763, and took his seat in the Lords three days later. L.J., xxx, 404.

153. Walpole, (Yale) Correspondence, xv, 216(1792). Walpole succeeded his nephew, George Walpole, in 1791 and died on 2 March 1797 in his eightieth year. His feelings towards the House were consummately expressed in the sarcastic verses he wrote on the elevation of Samuel Sandys to the peerage in December 1743, 'Verses Addressed to the House of Lords On Its Receiving a New Peer', ibid., xviii, 357-8.

154. Parl.Hist., xix, 1048.

> I shall never submit to the doctrines I have heard this day from the woolsack, that the other House are the only representatives and guardians of the people's rights. I boldly maintain the contrary. I say this House are equally the representatives of the people. They hold the balance; and if they should perceive two of the branches of the legislature unite in oppressing and slaving the people, it is their duty to interpose to prevent it.

This was the role attributed to the House of Lords by Lord Chancellor Bathurst on 31 March 1778 when he called it 'the moderator between the King and the people'.[155]

The eighteenth century view of the role of Parliament was as the institution responsible for meeting the emergencies of state, for airing and settling grievances, and for providing the financial requirements of the King's government. The House of Lords had surrendered its powers over money bills since 1673, but apart from this one limitation on its power, the Upper House shared with the House of Commons all powers of inquiry and legislation; it had complete and sole jurisdiction over its own privileges and the affairs of its members and, furthermore, it was also the supreme law court of the land.[156]

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155. Almon, Parl.Register, x, 357.

156. A discussion of the Lords' role in each of these capacities follows in subsequent chapters.

II

THE BUSINESS OF THE HOUSE : INQUIRY

Parliament has traditionally been regarded as a general forum of inquiry, whose field of reference ranged from redressing private grievances to maintaining a careful and constant vigil over an Administration's policies and its government of the country. The importance attributed to the House of Lords in this constitutional function has suffered due to the unrepresentative nature of the House. Yet in all such matters the Upper House possessed the same authority and unlimited jurisdiction as the House of Commons, and had at its command a variety of practices and procedures to enable it to fulfill this role and conduct a thorough and effective Parliamentary inquiry.

Public rumour alone was considered insufficient ground for instigating an inquiry in Parliament. On 5 December 1777, the Earl of Suffolk remarked that although 'the report of the defeat and captivity of General Burgoyne had every external mark of authenticity... still, till it came officially before the House, he did not see how the House could properly take notice of it'.[1] The way to comply with this rule was to lay information before the House. This could be obtained by several means. The Sovereign could refer to Parliament the consideration of important public events; this would be done either in a Speech from the Throne or in a written message under the Royal Sign Manual.[2] Thereafter, both Houses independently could Address the Crown for fuller information and details on these

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1. Almon, Parl. Register, x, 81.
2. See infra, p.63.

issues. Individuals and bodies outside Parliament could petition the Lords to draw their attention to matters of concern. Alternatively, members of both Houses could base their demands for an inquiry on information drawn from witnesses and documentary evidence. During the eighteenth century, growing use also came to be made of the still developing practice known as Parliamentary questions.

Petitions were a convenient means of bringing the opinions and grievances of the public to the notice of Parliament. They were the official means of requesting legislation and other Parliamentary action, but also the mode for protesting against proposed or existing legislation and resolutions of the House. [3] When several petitions were brought against the same bill or other issue, they were to be presented separately. [4] Each petition had to be presented by a peer. [5] Only one convention with regard to this rule has been found: on 17 January 1722, Lord Townshend took notice of the irregularity in the presentation of the petition of the London clergy against the Quaker Bill. The motion that the petition be received and read was made by the Archbishop of York whereas, according to Townshend, it ought to have been done either by the Bishop of London or by the Archbishop of Canterbury, York being the 'Metropolitan of another Province'. [6] However, the procedure

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3. List of petitions against legislation during the reigns of the first two Georges, H.L.R.O., Parliament Office Papers 58/26; e.g., Wentworth Woodhouse Muniments R 57-1.
4. E.g., L.J., xxi, 538 (1721).
5. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, pp.25-6.
6. Timberland, History, iii, 211.

of the House of Lords on this point was less formal than that of the House of Commons, for no peer required leave to present a petition to the House; it was his privilege to do so.[7] In introducing a petition, a peer would be expected to 'state the subject of it, in order for the House to have an idea how far it was proper to give leave for it to be read'.[8] This statement, which was a paraphrase of a resolution taken by the Lords on 30 May 1685,[9] was made by the Earl of Dartmouth on 18 May 1775 in the debate on whether to receive the Memorial of the New York Assembly brought in by the Duke of Manchester; similar declarations were made by Lords Hillsborough and Mansfield.[10] Objection was taken to the title of the petition, just as Edmund Burke, the Assembly's agent in London, had foreseen but which he had hoped could be overcome, as he mistakenly thought, by a peer's right not only to present the petition but of having it read by a clerk as well.[11] The House, however, refused to hear the petition read.[12]

No peer was obliged to perform this service for any petitioner. Several peers in 1768 refused to present John Wilkes's petition to amend the statement of errors which had been delivered into the House before Lord Bathurst agreed to do so, because he 'thought it becoming the senior Lord to take care that no suitor in our High Court should be denied justice whatever private opinion one might

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7. Burke Corr., iii, 166.
8. Almon, Parl.Register, ii, 152.
9. L.J., xiv, 22.
10. For the debate, see Almon, Parl.Register, ii, 152-6.
11. Burke Corr., iii, 166.
12. L.J., xxxiv, 461.

entertain of his morals or actions'.[13] It was also generally acknowledged that to have a petition on a public matter presented by one of the ministerial peers would be of great advantage to the petitioner's case.[14]

Whenever the prayer or subject of a petition was ordered to be heard at the Bar of the House, the petitioner had the right to argue his case personally or to be represented by counsel; but he could not take advantage of both means.[15] Yet the matter lay entirely at the discretion of the House; on 31 March 1733, the Lords agreed to the petition of the pilots of Deptford Sound in Kent to be heard by themselves and counsel against the Bill for the better regulation of their trade, at its second reading; the same concession was allowed to any who wished to be heard in support of the measure also.[16] The passage of the East India Company Restraining Bill of December 1772, which had been introduced as an urgent matter in the House of Commons, was delayed briefly in the Upper House as a result of granting the request of the United Company of Merchants to be heard by counsel against the Bill. Their petition was presented on 22 December before the Bill's second reading, and the counsel heard at the third reading on the following day. It made little difference to the Bill, which was passed by 26 votes to 6, and received the Royal Assent on 24 December, before the House adjourned for the Christmas recess.[17] In all cases, the Lords

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13. B.L. Loan MSS. 57/1, letter 83. For another example, see Burke Corr., iii, 155.
14. Wentworth Woodhouse Muniments, R 1-1180.
15. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, pp.24-5.
16. L.J., xxv, 77.
17. Ibid., xxxiii, 489,490,494; Sainty and Dewar, Divisions, 23 December 1772.

possessed the right to reject outright any petition found to be unsubstantiated or unsatisfactory in any way. Petitions to the House of Lords were to be addressed to both categories of peers, and any infringement of the rule would mean the rejection of the petition: that of the gentlemen, merchants, and clothiers of the West Riding against the Yorkshire Cloth Bill, May 1732, was ordered to be withdrawn as it was directed to the Lords Temporal only.[18]

A petition, therefore, served to bring an issue officially to the attention of the House and, if successfully accepted, would provide the basis for further inquiry.[19] If this was to be done, more information would be needed and, by the eighteenth century, the Lords had at their disposal a number of procedures and conventions designed to supply this need. The main sources of information were witnesses and documents.

No witnesses could be examined at the Bar of the House unless prior notice of the intention to do so had been given and a motion made to that effect. The ruling of the House on this point was clearly expressed by the Earl of Sandwich on 7 November 1775 when he opposed the Duke of Richmond's surprise motion to examine Richard Penn, Deputy-Governor of Pennsylvania, with a view to authenticating the petition of the twelve American colonies, which formed the Order of the Day.[20] The practice of the House of Lords was to summon a

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18. L.J., xxiv, 122.

19. E.g., ibid., xxxvi, 324,335-9 (1781); Debrett, Parl.Register, (2nd.serv.) iv, 371-8.

20. Almon, Parl.Register, v. Richmond's motion and Sandwich's reply, p.43. Sandwich's assertion was supported by Lord Lyttelton, p.45. For the debate, see pp.43-54. The consideration of the Petition of the American Congress and Penn's interrogation were ordered for the tenth. L.J., xxxiv, 499-500,504-6.

person,whom it wished to examine to attend at the Bar of the House on a certain day, to be sworn.[21] The witness would be served with the order of the House, signed by the Assistant Clerk of the Parliaments. If the person was in gaol at the time, the order was directed to the governor of the prison to deliver him up in custody in the same manner.[22] It was not necessary for the witness to receive the summons personally; in cases where a person was known to be avoiding the messengers of the Lords, the service of the order at his house was usually deemed good. If the person summoned should then not attend on the named day, the Lords would order him to be taken into custody by the Gentleman Usher of the Black Rod.[23] If the witness was a member of the peerage, the Lord Chancellor would be instructed to write a letter desiring him or her to attend at the House of Lords.[24] The House of Lords had unrestricted power in summoning witnesses to its Bar, with the sole exception of members of the House of Commons. In such cases, the Lords sent a message requesting that the Lower House give leave to the member concerned to attend to give evidence.[25]

All witnesses before the Lords were examined on oath.[26] A person who wilfully gave false evidence, therefore, was liable to be punished for perjury; other offences, such as prevarication,

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21. E.g., L.J., xxii, 159(1723); xxxi, 292(1766).
22. E.g., ibid., xxiii, 95(1727); xxvii, 439,440(1750).
23. See the incident of 9 and 12 February 1739, Torbuck, Debates, xvi, 178-80. Another example, L.J., xxi, 429(1721).
24. May, Parliamentary Treatise, p.239.
25. E.g., L.J., xx, 134(1715); xxii, 175(1723); xxv, 44(1737); xxx, 435(1763); xxxv, 592(1779).
26. E.g., ibid., xxii, 545(1725); xxvii, 65(1747); xxxi, 54,55(1765). Peers, according to privilege, were examined on their honour: e.g. the examination of Lord Viscount Townshend and Lord Carteret on 30 April 1723 at the second reading of the Bill of Pains and Penalties against George Kelly, ibid., xxii, 171.

were punishable as a contempt of the House.[27] The House of Commons had no authority to administer an oath to its witnesses, and this remained a controversial, though latent, issue in the relations of the two Houses throughout the period.[28] When witnesses were summoned to appear before the House or before a Committee of the Whole House, the examination would be conducted at the Lords' Bar. A member of the House of Lords, however, if called upon to give evidence before his own House, did so on his feet from his place in the chamber.[29] The procedure when a member of the peerage who had no seat in Parliament was to be examined, was for the peer to give his evidence standing near the clerks' Table, where a chair had been placed for him to sit; the oath would be administered to him by the Lord Chancellor.[30]

Questions to the witnesses could be put either by counsel, if any were employed in a case, or by the peers themselves, or both.[31] The House of Lords was reminded of its official and unofficial practices while in a Committee of the Whole House on the Greenwich Hospital inquiry on 20 April 1779. One witness, Mr.Lefevre, a lieutenant in the navy, so infuriated the Earl of Denbigh by not answering directly to the point that it brought the noble peer from his place.[32] He approached the witness and, at first in a low

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27. E.g., ibid., xxi, 418,420(1721).
28. See infra, p.540.
29. E.g., L.J., xxii, 545(1725).
30. E.g., ibid., xxv, 303(1739). At an impeachment trial the oath would be administered by the Lord High Steward, e.g. xx, 309, 311(1716).
31. B.L. Add.MS. 51341, ff.46-8.
32. The Earl of Denbigh, apparently, was seated on one of the woolsacks, though he held no official post in the Committee, Lord Scarsdale being the Chairman. Almon, Parl.Register, xiv, 232; L.J., xxxv, 694.

voice and with many gestures,and then,quite audibly, told him to make his answers relevant to the question, 'and if he did not attend to what he said, he would certainly interrupt him'.[33] This brought forth a complaint of intimidation of a witness from the Duke of Richmond, who also asserted 'that no noble lord had a right to hold converse with a person under examination'.[34] This incident led to Lord Chancellor Thurlow rising to describe the conventions normally followed by the House. He confirmed that all questions were, according to strict order, to be put to the witnesses from the woolsack, 'it being the medium of communication between the noble Lord, the examinant, and the person examined'.[35] However in practice this form was rarely, if ever, observed; but he promised that, if insisted on, the order would be strictly enforced. Richmond replied that he was not so much concerned with the non-compliance with the order as with the attempt at intimidation. His speech endorsed Thurlow's remarks that questions would be put directly by peers to the witness at the Bar, and also revealed that both questions and answers would be taken down in shorthand by a clerk positioned near the Bar.[36] At another sitting of the same inquiry, on 17 May 1779, it transpired that no witness had the right to see documents that contradicted his evidence.[37] No comment was made during this debate, and none other has been found whether questions to witnesses who were prisoners in custody had to be previously written down and

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33. Almon, Parl.Register, xiv, 232-3.
34. Ibid., p.233.
35. Ibid. Thurlow was twice appointed to the woolsack; he first held the office from 1778 to April 1783 when dismissed by the Fox-North Coalition Government. He was reinstated by Pitt in December 1783, and held the office until June 1792.
36. Ibid., p.234.
37. Ibid., pp.368-9

submitted to the Lord Chancellor or Chairman of the Committee, as was the case in the House of Commons.[38]

The House of Lords also had unlimited authority in ordering companies, corporations, boards of commissioners such as Commissioners of Accounts, Customs and Trade, and government departments, to lay before the House any papers relevant to the progress of an inquiry.[39] If the papers were already in the possession of the House of Commons, the request would be made by message to the Lower House.[40] The Lords were also entitled to consider state papers presented by an individual peer providing that their authenticity was confirmed before the House by the appropriate Secretary of State who was a member of the Upper House.[41] Hence, on 4 December 1778, although the Marquess of Rockingham had in his possession the very document on which he wished to base his motion, namely the proclamation of the King's Commissioners in America, he could not regularly present it to the Lords as it had not been authenticated and, since the then Secretary of State for the Colonies[42] sat in the Commons, the only way of bringing it before the House was by an Address. After further debate, an Address to this end was approved and ordered.[43] It was customary, however, for copies of declarations of war and

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38. Thomas, House of Commons, p.24.
39. E.g., L.J., xxi, 573,574 (Sword Blade Company's Books, 19 and 20 June 1721); xxiv, 255,271 (Accounts of the sale of South Sea Company directors' estates, 3 May 1733); xxxi, 624,630 (Papers relating to the East India Company affairs in connection with the Dividend Bill, 1 and 3 June 1767).
40. E.g., ibid., xxi, 571(1721).
41. Almon, Parl.Register, xiv, 49.
42. Lord George Germain, later created Viscount Sackville.
43. L.J., xxxv, 529.

treaties to be sent to each House of Parliament [44] and, upon royal command, so might other official documents without previous request by the House if the government thought it advantageous for the passage of its policies. [45] State and other official papers would be delivered either by a minister or by one of the household peers. [46] Papers from different departments, or requested by various Orders and Addresses, had to be presented separately, even when brought by the same person. [47]

The problem of distinguishing between papers for which an Address had to be made to the Crown and those which could be ordered directly from departments by the House, was often discussed in the House of Lords from the mid-eighteenth century onwards. In 1740, a Committee appointed to search for precedents as to the proper procedure reported that, whereas there were instances of both Orders and Addresses, the latter were mainly used for requesting military, diplomatic and council papers. [48] Nevertheless, when a motion that copies of the instructions to Admiral Vernon be laid before the Lords was successfully opposed by Government peers that same day, 1 December 1740, those who had supported the motion claimed that 'the call for all instructions given to generals and admirals is not only proper and precedented, but is also a necessary step towards the exertion of our privilege, as hereditary counsellors, of advising the Crown'. They also protested 'because we do not find any negative put upon

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44. E.g., ibid., xxi, 546 (Treaty with Spain, 1721); xxvii, 247 (Treaty of Aix-la-Chapelle, 1748); xxxiii, 42,43 (Declaration relating to the Falkland Islands, 1771).
45. Ibid., xxxi, 228,235 (Stamp Act Crisis Papers, December/January, 1765-6).
46. E.g., ibid., xxii, 668(1726); xxv, 580-81(1741).
47. E.g., ibid., xxxv, 283(1778).
48. Ibid., xxv, 542,545-6.

motions for instructions before the year 1721, from which time indeed instructions began to be of such a nature, that we do not wonder their authors desired to conceal them'.[49] A similar motion for copies of Admiral Haddock's instructions was negatived a week later, 8 December, on the grounds that there was no precedent. In this debate, Lord Bathurst stressed the point that whether the motion was for an Address or an Order of the House, was immaterial; his concern was the authority of the House itself which 'has dwindled of late years,and nothing can bring you so low as to refuse inquiries'.[50] On 15 February 1779, the Duke of Richmond moved for a copy of the charges brought against Admiral Keppel and of the sentence of the court-martial. A query regarding the correct procedure gave rise to a conversation in which the Lord Chancellor's opinion in favour of an Address was challenged by the Duke of Richmond, Lord Camden, and the Earl of Effingham, who argued successfully for issuing an order to the appropriate officer to produce the desired papers.[51] Early during his tenure of the woolsack, Lord Chancellor Thurlow declared it to be his opinion that every lord, in moving for papers, ought to give his reasons for doing so and state what he hoped to achieve from them. The Earl of Shelburne referred to this 'doctrine' on 1 June 1780 before moving to Address the King for a copy of the royal declaration published in the London Gazette in April, which suspended freedom of navigation and commerce with enemies in wartime. He also condescended to comply with the second part of Thurlow's ruling 'though contrary to the usual mode of conducting business in that House', and announced his ultimate aim to be to move an Address to

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49. Ibid., xxv, 546.
50. B.L. Add.MS. 6043, f.39.
51. Almon, Parl.Register, xiv, 121; L.J., xxxv, 575,576.

the Crown to remove the Earl of Sandwich from his office as First Lord of the Admiralty. His motion for papers, however, was rejected by 94 votes to 39 (including proxies).[52]

Requests for papers that would not reveal any government secrets rarely met with serious opposition; but paradoxically, the advantage of a motion for documentary evidence lay in the possibility of its being refused, this being an implicit indication that the government did have something to hide.[53] Hence, a motion for papers as a basis for a Parliamentary inquiry was one of the most effective tactics employed by the opposition for raising issues embarrassing for the government of the day. The surrender of Earl Cornwallis and his army at Yorktown in 1781 was one such case. In a letter of 5 February 1782 to Earl Temple discussing the likely outcome in the Lords on this issue, the Marquess of Rockingham also enunciated the theory of public responsibility which the Opposition, if not Parliament, was waking up to.[54]

> I have no expectation of any success in the House of Lords, but upon such a calamity and national disgrace, it surely will become us to propose to bring on an inquiry....The public at large have a right to know whether the real cause has not arose from the neglect, inability, or some other cause, in his Majesty's Ministers.

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52. Almon, Parl.Register, xv, 335; for the debate, see pp.335-8. Also Parl.Hist., xxi, 629-30.

53. P.R.O. 30/8/54, f.132. For an example of a rejected motion, see B.L. Add.MS. 47584, f.7; L.J., xxx, 346.

54. Buckingham (ed.) Court and Cabinets, i, 21-2.

This inquiry was initiated by the Duke of Chandos who gave notice of his intention on 4 February 1782 and secured the Lords' approval for the motion three days later.[55] The debate of 7 February revealed a consensus of opinion among Government, as well as Opposition speakers, about the need for an inquiry.[56] Indeed, the Government had already been preparing for the event; on 1 February, the Earl of Sandwich had complained to John Robinson, Secretary to the Treasury under Lord North's Administration 1770-82, that due to the arrangements to be made for the debate that would occur on naval affairs, 'My whole mornings are taken up from ten till five in digesting the papers that are to be laid before the House'.[57] The Committee of the Whole House, postponed from 19 February, eventually sat on four days between 27 February and 6 March 1782. In the meantime, the House sent numerous Addresses to the Crown requesting papers on various matters relevant to American affairs, and particularly to the circumstances at Yorktown, all of which were delivered by the appropriate officers and peers, and referred by the Lords to the Committee.[58] No recommendations were brought before the full House, any Opposition censure motion on the Ministry's conduct of the affair having been defeated in the Committee.[59]

The extent of an inquiry was restricted to the specific issue to be considered and by the nature of the documents called for and

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55. L.J., xxxvi, 380 (indicated by the Order to summon the House) p.383.
56. Debrett, Parl.Register (2nd.ser.) viii, 100-12; Parl.Hist., xxii, 985-9.
57. H.M.C., Abergavenny MSS., p.48.
58. See Lords Journal entries for 11,12,15,18,25,27,28 February and 1,4,6 March 1782; L.J., xxxvi, 385,386,387,388-9,390-2,397-8,400, 401,402,403-4,408.
59. E.g., Sainty and Dewar, Divisions, 6 March 1782.

produced. The exception was an inquiry into the State of the Nation which the Duke of Richmond defined in 1777 as 'includ[ing] everything'. He went on to urge 'every one of your Lordships in the least used to business, [to] lend his assistance in prosecuting those branches that may appear most important. One object may strike one, and another another. The inquiry will be open to all'.[60] His own interest lay in the cost of the American war in terms of men and money, and he accordingly made eight motions for papers on diverse aspects of the issue, all of which were approved.[61] Later in the debate, Richmond also demanded the returns concerning British and foreign troops stationed at Gibraltar and Minorca, while the Duke of Grafton requested information on the enforcement of the Act passed in 1775 'to prohibit trade and intercourse' with the American colonies.[62] The Committee of the Whole House on the State of the Nation first sat on 2 February 1778; it met regularly throughout February and March to consider the issues raised by the papers called for on 2 December 1777 and on subsequent days.

The inquiry of 1778 arose from the references in the King's Speech at the opening of the session 20 November 1777 to the continuing state of war with America.[63] A slight comment or observation thus made was all the justification required by opposition to instigate an inquiry into a government's conduct of business. The Speech from the Throne on 19 October 1721 was not debated in the House of Lords until 13 November 1721, but the consideration of issues arising from

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60. Almon, Parl.Register, x, 56 (2 December 1777).
61. Ibid., p.58.
62. Ibid., pp.66,70. For the whole debate, see ibid., pp.55-71, and Parl.Hist., xix, 472-86. For a complete list of papers requested, see L.J., xxxv, 258-9.
63. Ibid., p.248.

the Speech, such as foreign alliances and the navy debt, dominated the business of the House for many weeks after.[64]

When papers were presented to the House, any peer could have them read aloud once by the clerk.[65] Unless this was done, no reference could be made to them in a future debate. It was the custom of the House of Lords, however, to hear only the titles of documents read at the first instance,[66] and this practice appeared to have already been established by the time of the Hanoverian succession.[67] The papers would then be read at length on the day appointed for a debate on the issue.[68] This process could take up a considerable amount of time: on 12 March 1779, most of the afternoon sitting on the Greenwich Hospital inquiry was taken up with reading the relevant papers on the Table, which had been referred to the Committee of the Whole House.[69]

Yet if any peer expressed a desire to have a paper read in its entirety when first presented, the House would comply.[70]

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64. Speech from the Throne, ibid., xxi, 592-3; the House of Lords took the Speech into consideration on 13,15,20 November and 19 December 1721, ibid., pp.603,605,608-9,632-3, and the Navy Debt on 17,22,27 November, 2,5 December 1721, 13,25 January, and 1,20 February 1722, ibid., pp.607,610,618,621,647-8,662-5, 670-1,697. For the debates, see Timberland, History, iii, 189-93,194,202-4,206-7,216-9,223,234-5; see also Parl.Hist., vii, 922-7,935,939-40,952-8,972.
65. E.g., American Papers, January 1766, L.J., xxxi, 235-9,246, 249,250,252,253,258.
66. E.g., ibid., xx, 321(1716); xxi, 610(1721); xxxiv, 286,286-90(1775).
67. E.g., ibid., xx, 12(1714).
68. E.g., ibid., xxxi, 516,531,546 (1767).
69. Almon, Parl.Register, xiv, 166(1779); L.J., xxxv, 628.
70. E.g., ibid., xxv, 295 (1739).

On 25 January 1781, Lord Viscount Stormont delivered to the Lords a written message from the King, plus eight state documents relating to the break in good relations with Holland. Initially, the House followed its usual procedure: the titles were read and the papers ordered to lie on the Table. Then it was moved that the papers be read in full.[71] As the Deputy Clerk of the Crown was about to commence reading the eighth and last document, a copy of the commercial treaty concluded by Holland and America, Stormont quietly told him to read only the first and last two articles. This done, the Minister for the Northern Department intended to propose an Address of Thanks to the King, but the Duke of Richmond rose first to inquire whether the papers read contained all the information that Stormont meant to provide the House, and requested that the text of the treaty also be read at length. Though opposed by Lord Chancellor Thurlow, the Duke insisted and won the point.[72]

The authority for ordering the printing of papers in the possession of the House lay with the House itself, and the proper time to do so would be after the documents had been given due consideration.[73] Hence, the printing of the peace preliminaries in November 1762, before they were presented to either assembly, was considered highly irregular and found objectionable by members of both Houses of Parliament,[74] and was acquiesced in only as an acknowledgement of the King's prerogative over state papers.[75]

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71. Ibid., xxxvi, 203-4.
72. Debrett, Parl.Register (2nd.ser.) iv, 37-8.
73. B.L.Add.MS. 32934, ff.48-9.
74. Walpole, Memoirs of George III, i, 174-5.
75. B.L. Add.MS. 47584, f.4.

The advantage of moving for papers as a means of demanding information, was that it gave an opportunity for debating the subject. A quicker means, however, was the use of Parliamentary questions.[76] This practice of verbally interrogating ministers was a development of the eighteenth century, and its first recorded use occurred in the House of Lords. On 9 February 1721, Earl Cowper referred to a rumour about the arrest of Robert Knight, chief cashier of the South Sea Company, who had absconded from England at the time of his being examined about the Company's affairs. Earl Cowper requested that the Government confirm the report. The answer came from the Earl of Sunderland, First Lord of the Treasury who, having described the manner of Knight's arrest, moved to Address the King that his representatives abroad be ordered to secure Knight's return to England as soon as possible.[77] The significance of the incident lay in that Cowper, an ex-Lord Chancellor, had deviated from the strict rule of debate that peers could only speak to a motion. Not only was this not censured by the House, but he also secured an answer, without protest, from the head of the Government. Strictly speaking, it was not until Sunderland had made his motion that the issue was regularly before the House. Despite the successful use of the tactic in 1721, the Parliamentary question did not immediately become an accepted part of Parliamentary procedure. It would be presumptuous to suggest, on the tenuous basis of the paucity of clear instances, that Parliamentary questions were rarely asked during the remainder of the early Hanoverian period; yet the very deficiency

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76. For a discussion of the origin and development of this practice into the modern-day procedure in both Houses and for examples other than those quoted here, see Howarth, Questions in the House.

77. Timberland, History, iii, 141; also Parl.Hist., vii, 709-10.

of the evidence points to the difficulty of establishing the device in regular Parliamentary practice.

On 8 February 1739, the Duke of Newcastle laid before the House of Lords a copy of the Convention of El Pardo between Britain and Spain.[78] Lord Carteret, Leader of the Opposition, immediately asked whether there were any more Spanish documents that the House ought to know about; he was confident that those of the Government who had been engaged in concluding the secret treaty 'would be extremely glad to have this opportunity of vindicating their own characters by letting the House and all the world see that they have entered into no scandalous, no clandestine measures'.[79] The Government at first took refuge behind procedure: the Earl of Cholmondeley 'beg[ged] leave to put your Lordships and the noble Lord in mind that the forms of this House are not to be dispensed with on this or any other occasion...I think the noble Lord's question extremely improper to be answered here'; and he reminded Carteret that,unless he wished to make a motion, the House should proceed to the day's business.[80] In a second speech, Carteret pressed the point of how time-saving and beneficial it would be for the House if Newcastle gave a direct reply. The Secretary of State took the bait, and said: 'The noble Lord who spoke last has put upon me to answer a question, which I conceive the noble Lord, as a member of this House, has no right to ask, and I, as a Minister, am under no obligation to answer'.[81] This was a concise statement

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78. L.J., xxv, 287. Parl.Hist., x, 1013 also gives the date as 8 February, but Timberland, History, vi, 1, attributes it to the fifth.
79. Ibid., pp.1-3; Parl.Hist., x, 1015.
80. Parl.Hist., x, 1015-7.
81. Ibid., col.1018.

of the rule of the House; but, by abandoning the rule and proceeding to give his opponent a short but direct answer, Newcastle gave implicit recognition to the practice of verbal interrogation of Ministers. Carteret, having won the point, returned to his original question, which drew from Newcastle the information that a paper had been transmitted to the British Ministers by the Spaniards, but it concerned only the private affairs of the South Sea Company.[82] This was confirmed on 19 February when Newcastle delivered the document to the House; but it also revealed that Spain would not rest content with the terms of the Convention signed in January.[83]

The incident of 8 February, however, taught Newcastle a useful lesson. On 31 May 1739, Lord Bathurst employed the conventional method of seeking information, and moved an Address to know whether Spain had paid the compensation agreed to in the Convention and, if not, what reasons had been given. Newcastle immediately replied that Spain had not complied with the agreement. This time, it was the Opposition's turn to insist on proceeding 'in a more Parliamentary way',[84] while the Secretary of State stressed that he had 'the King's leave to give this account and that the House is as thoroughly informed thus as it can be by an Address'.[85] Thereafter, the debate centred on whether the intended motion, which had been widely

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82. Ibid., col.1021. For the whole debate, see Parl.Hist., x, 1013-23; Timberland, History, vi, 1-10; Torbuck, Debates, xvi, 164-78.

83. L.J., xxv, 295.

84. B.L. Add.MS. 6043, f.17.

85. Ibid. For the debate see ibid., ff.17-18; also Timberland, History, vi, 227-30; Torbuck, Debates, xvii, 182-6; Parl.Hist., x, 1405-9. These three cite the division figures as 51 to 38 against the Address. For another report of the incident, see H.M.C. Buckinghamshire MSS., p.32.

rumoured well in advance, ought to have been communicated to the King and permission sought to give a direct answer. The motion to Address was eventually defeated by 56 votes to 42.

The next two decades were a period of relative calm in politics, reflected in the small number of reported debates. This factor, consequently, makes it difficult to trace any development in the use of the Parliamentary question during this period, but what evidence exists suggests that the practice did not fall into abeyance. At the third reading on 5 March 1756 of the Bill to grant commissions to foreign Protestants serving in America, Lord Dacre, an infrequent speaker in the House of Lords, sought confirmation that orders had been issued for enlisting in Germany also. This caused considerable confusion in the House until the Earl of Halifax, a member of the Government, 'owned that he believed it was true. The Duke [of] Cumberland had given such orders without participation of the Duke of Newcastle'.[86] This damaging admission and the consequent pitiable attempt at a defence of the head of the Ministry did not, however, endanger the Bill, which passed without a division. Following the accession of George III, political rivalry once more became acute, with its fire fed by the numerous controversial issues that arose during the first decades of the reign. The longest administration of the period, that of Lord North, from 1770 to 1782, won a reputation for its reluctance to provide Parliament with information. A typical criticism of the Government was voiced

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86. Walpole, Memoirs of George II, ii, 175-6. Halifax was First Lord of Trade and Plantations, 1748-61. L.J. xxviii, 512-3.

by the Duke of Grafton on 30 May 1777 in the debate on the Earl of Chatham's motion for ending hostilities in America. He complained that 'if called upon in Parliament, for information, which every member in either House hath a right to expect, they [the Ministers] either gave no reply, or evaded the question'.[87] In an effort to pierce the Ministry's defence of silence, the Opposition resorted to a fuller use of the Parliamentary question.

On 7 December 1770, Lord Mansfield, Chief Justice of the Court of King's Bench and acting Speaker of the House of Lords, moved that the Lords be summoned for the tenth,[88] which, according to common practice, was taken to indicate that an important motion would then be made. This followed a motion made in the Commons on the preceding day for an inquiry into the administration of criminal justice, and which the Ministry had successfully suppressed. On the appointed day, however, Mansfield did nothing more than inform the House that he had delivered to the clerk a document which contained the judgement of the Court of King's Bench on the case of Rex v Woodfall,[89] which their lordships could examine at their liberty. By not moving that the document be read by the clerk, Mansfield obstructed any other motion and proceedings of the House upon it. Therefore, on the next day, his great rival Lord Camden proposed to put six questions to Lord Mansfield, challenging his rulings on the rights of juries made during the Woodfall trial.[90] Mansfield immediately complained 'that this method of proposing questions to him, was taking him by surprise; that it was unfair; and that he

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87. Parl.Hist., xix, 326. For the debate, ibid., cols.316-52; also Almon, Parl.Register, x, 93-129.

88. L.J., xxxiii, 20; Parl.Hist., xvi, 1312.

89. Ibid., Henry Woodfall was the printer and publisher of the Public Advertiser.

90. P.R.O. 30/8/83, f.80, 'Questions to L.M.'

would not answer interrogatories'.[91] Camden's persistence in calling upon Mansfield to name a day on which he would return his answers forced the latter to promise that the House would be allowed to debate the issue; but when the Duke of Richmond interpreted this as a pledge from Mansfield, he hurriedly retracted and refused to appoint a day. The significance of the incident lay in the way it demonstrated how effective the Parliamentary question could be in unnerving one who was not only the foremost lawyer of his day but also a politician of outstanding ability, and who was usually in complete control of the proceedings of the House.

In the following years, Government peers consistently objected to the new practice, and always attempted to prevaricate whenever confronted with a Parliamentary question; and yet they always, finally, did give a Parliamentary answer. In the debate on the Address of Thanks on 31 October 1776, the Duke of Grafton specifically asked the First Lord of the Admiralty, the Earl of Sandwich, for information concerning the extent to which the British navy was prepared to meet enemy fleets. He received no answer until the Duke of Richmond's perseverence and re-statement of the question drew from the Minister a reply that 'our fleet was in prime condition; that the complements of our ships were nearly made up; and that we could fit out a fleet at a short notice, nearly equal to all the powers of Europe'.[92] Later in the same debate, the Earl of Shelburne called on Cabinet Ministers to state whether there had been any communication between them and the French court on the

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91. Parl.Hist., xvi, 1321-2; Debrett, Debates, v, 370.

92. For the relevant part of the debate, see Almon, Parl.Register, vii, 18-22.

matters he had raised. But no Minister was ready to acquiesce twice the same day, and Shelburne was given no satisfaction. Therefore as the debate drew to a close, he attacked the Earl of Sandwich for not providing the information he had asked for, though admitting it was in his power to do so. Shouts of 'Order!' came from the House as Sandwich made his plea, that 'he was in the judgement of the House, that he was ready, if the House insisted on it'.[93] Back came the reassuring cries of 'No; no; no;' and finally the House divided on the Opposition amendment which was rejected by 91 votes to 26.[94]

Sandwich's hostility to being interrogated on this occasion probably stemmed from unpleasant recollections of a similar incident the previous year. On 19 May 1775, the House of Lords went into debate on the motion to repeal the Quebec Government Act of 1774. Lord Lyttelton, supported by several peers, called on the Government to admit that the build-up of military and naval forces in Spain was in preparation for war. Lord Rochford, Secretary of State for the Northern Department and Leader of the House,[95] insisted that 'no lord had a right to call on him, and yet declared the Court of Spain had given assurances of having no hostile designs against us; — but Lord Sandwich succeeded worse, for it came out that we had but 17 ships at home, and they wanted 4000 men'.[96]

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93. Ibid., pp.22-31.

94. For the whole debate, see ibid., pp.1-35; see also Parl.Hist., xviii, 1368-92. Six years later, when Shelburne himself was a prominent member of the Cabinet, he denounced Earl Fitzwilliam's attempt to question him about recognising the independence of America, a question which he had written down on paper, as 'contrary to all order and precedent'. Fortescue, Corr. of George III, vi, 185; see also Parl.Hist., xxiii, 305-7.

95. See infra., p.69.

96. Walpole, Last Journals, i, 462-3.

A step in the direction of the modern procedure for putting questions to ministers was foreshadowed in the House of Lords a few years later. The first Order of the Day on 2 June 1778 was the third reading of the Chatham Annuity Bill. Prior to the Lords proceeding on this matter, however, the Earl of Derby rose to ask a question regarding the defeat of the army at Saratoga and the Convention that followed. Lord Weymouth, the Southern Secretary, replied that he was not competent to answer the question, but if he had been given a day's previous notice he would have mastered the issue in order to give a satisfactory answer.[97] A brief conversation ensued, but no motion being made, and the rest of the lords making clear their desire to enter upon the business of the day, Lord Derby expressed his willingness to let the matter rest temporarily. But as soon as the Chatham Bill had been passed, Derby moved an Address to the Crown for laying before the House all the information available about the detention of the army in America. The debate was a short one, and the motion defeated on the previous question.[98] However, the day's sitting did not end there,for the Duke of Bolton thereupon moved for an Address to defer the prorogation of Parliament at that critical juncture. The debate continued to a late hour, but also ended in defeat for the Opposition in a division, which they lost by 20 votes to 42.[99]

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97. Almon, Parl.Register, x, 425.

98. Ibid., pp.447-9. For the use of the previous question, see infra, pp.376-80.

99. Almon, Parl.Register, x, 449-67; see also Parl.Hist., xix, 1257-74.

A few months earlier, in March 1778, in reply to a question put to him by the Duke of Grafton, Viscount Weymouth acknowledged that it was his duty to give 'every possible satisfaction respecting all sorts of questions in my power to answer and fit to be answered'.[100] The less formal nature of proceedings in the House of Lords doubtlessly explains why the use of Parliamentary questions originated there, and aided it in winning respectability as a part of the recognised practices of the House. And yet the lords' concern with the dignity of their assembly and the proper order of their proceedings was a serious factor contending against the adoption of a new and unorthodox practice. Furthermore, the continued hostility of leading members of the House to the procedure meant that its acceptance, even in the last quarter of the eighteenth century, was not without its problems. Certainly Viscount Stormont, Secretary of State for the North 1779-82, endeavoured to evade the questions put to him. On 25 April 1780, he made a vague reference to the charges of treason made by the press against the Duke of Richmond. The Earl of Shelburne immediately asked whether he had information to substantiate such charges. Stormont found refuge in a plea to the House as to whether he was obliged to reveal information that was only come by through being in office. His interrogator conceded that he was not bound to answer, but maintained that questions from individual peers 'might become questions of the House...to which it would be incumbent on any noble lord to give a direct answer'.[101] Two years later, on 31 January 1782, the Duke of Richmond made the execution of

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100. Parl.Hist., xix, 835; for the debate, see ibid., cols.834-6; also Almon, Parl.Register, x, 271-3.

101. Parl.Hist., xxi, 479. For the debate, see ibid., cols.459-91.

Colonel Isaac Haynes the subject of a Parliamentary question. Stormont was again the Minister questioned and, on this occasion, he made his stand by invoking the rule that it was irregular to commence a debate when there was no question before the House. Richmond was not to be outdone and, in his reply, 'affected the tone, emphasis, and general style and gestures' of Lord Stormont.[102] Richmond eventually brought the exchange of views to a close by fulfilling an earlier promise that, should he be given no answers, he would make a series of motions on the issue, and prepared the House to receive these by moving that the Lords be summoned for four days hence.[103] Thus, if a verbal interrogation did not procure the desired information, a peer could always resort to the conventional method of a formal motion.

By the early 1780s, Parliamentary questions had become an established, although infrequent, feature of Parliamentary procedure. The practice still had far to develop before it achieved its modern form: no notice was required before a question could be put, and no specific question time had been appointed. Questions could be asked at any time during proceedings: before or after public business, during or between debates. Furthermore, in the eighteenth century, Parliamentary questions were still confined to matters of political importance: on 8 April 1783, Richmond again asked whether there was any basis to the rumour that Lord North was to be raised to the peerage, and directed his question in particular to the Duke of Portland, the newly-appointed First Lord of the Treasury and nominal head of the Coalition Government, who

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102. Debrett, Parl.Register (2nd.ser.) viii, 83.
103. Ibid., pp.81-88.

sat on his right.[104] At other times, a direct question to ministers might appear to be the quickest way of ascertaining the time-table for political business.[105] It was to take a while longer before petitions were supplanted as the most popular means for bringing individual grievances to the attention of the House.

A Parliamentary inquiry could also be the precursor and the basis for punitive action against the King's Ministers. The traditional procedure was by impeachment,[106] but during the eighteenth century this process was abandoned in favour of votes of censure and of no confidence. The transition from one procedure to another had to be a gradual one, and continued for some time to be challenged with regard to its Parliamentary legality. An early, and one of the most famous examples of the procedure became itself the subject of a censure motion. On 13 February 1741, both Houses of Parliament discussed the same Opposition motion for an Address 'to advise and beseech His Majesty...to remove...Sir Robert Walpole...from His Majesty's presence and councils for ever'.[107] After a debate of eleven hours in the Lords, the motion was defeated by 108 votes to 59, including proxies of 19 and 10 respectively.[108] Thereupon, the Duke of Marlborough, for the Government, made a second censure motion.

> To resolve, that any attempt to inflict any kind of punishment on any person, without allowing him an opportunity to make his defence, or without proof of any crime or misdemeanour committed by him, is contrary

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104. Ibid., xi, 104.
105. E.g., ibid., xiv, 12. The House of Lords, however, did not sit on 1 December 1783, L.J., xxxvii, 15.
106. See infra, p.165.
107. L.J., xxv, 596.
108. B.L.Add.MS.6043, f.72-85.

> to natural justice, the fundamental laws of the realm, and the ancient established usage of Parliament, and is a high infringement of the liberties of the subject.

This was approved by the House in a division on the previous question by 81 votes to 54.[109]

Despite being described as unparliamentary practice in February 1741, censure motions against Government policies had already been added to the Opposition's armoury of tactics against Administration: Lord Bathurst's censure vote of 15 April 1740 on Ministers,for failing to send land forces to the aid of Admiral Vernon in his attack on Porto Bello, was only defeated by 62 votes to 40.[110] Richmond's motion of 25 May 1778 that the North Ministry did have previous knowledge of the equipment in the possession of the French fleet before it sailed from Toulon in April, was rejected by an even closer margin of only sixteen votes.[111] Occasionally, a government would underline its success in repulsing an opposition centure motion by proposing a retaliatory motion themselves. The estimates of the cost of maintaining foreign troops in British pay were delivered to the Lords on 11 January 1743. They were ordered to be considered on 1 February, on which day Earl Stanhope moved an Address that the Hanoverian troops be discharged. The motion was rejected by 35 votes to 90, whereupon the Government moved its own motion for an Address commending their conduct in sending British and foreign forces to assist the cause of Maria Theresa, Queen of Hungary.[112]

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109. L.J., xxv, 597; B.L.Add.MS.6043, ff.85-6.

110. L.J., xxv, 514; B.L.Add.MS.6043, ff.141-5; Lyttelton Memoirs, i, 141.

111. Almon, Parl.Register, x, 408-24; also Parl.Hist., xxiii, 1145-60; Pratt Papers, U840/C 173/33.

112. L.J., xx, 182,191,195-7; Timberland, History, viii, 236-349.

Hence, the inquisitorial function and procedures of the House were not for the use of the opposition alone; they also provided ministers with the means for winning and expressing Parliament's approval for their policies. Known as votes of confidence, they would take one of two forms: either an Address of Thanks to the Sovereign for a speech or message by which the government communicated to Parliament issues, events, or decisions of national importance such as peace, war, foreign alliances; or an Address pledging loyalty or the co-operation of the House in taking the necessary action and in passing legislation, particularly on matters concerning the royal prerogative and in making provision for the royal family.

Several of the most important issues brought before Parliament during the period 1714-84 were communicated directly on the command of the King by a message issued under the Royal Sign Manual. The procedure in the House of Lords was as follows: the peer entrusted with the King's command signified to the assembly that he had a written message to present, which he then delivered to the woolsack to be read by the Lord Chancellor.[113] This much of the procedure remained constant throughout the eighteenth century; but on 20 February 1772, the Lords Journals record that, following the Lord Chancellor's reading of the message presented by the Earl of Rochford touching marriages in the royal family, it was given a second reading by the clerk.[114] This practice was observed by the House for the next six years, until on 17 March 1778 the message

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113. E.g., L.J., xx, 241 (1715); xxii, 412 (1725); xxvi, 311 (1744); xxx, 264-5 (1762); xxxii, 267 (1769).

114. Ibid., xxxiii, 258.

acquainting the Lords of the treaty concluded between France and America was read twice more by the clerk.[115] Thereafter, to the end of the period under review, the procedure was irregular, messages being occasionally read twice by the clerk,[116] at other times, once only.[117] The preponderance of examples in favour of the latter custom suggests that this was eventually established as the acknowledged practice of the House, which it continued to observe into the next century.[118]

On 2 March 1719, Earl Stanhope acquainted the House that he was commanded by the King to present a message under the Royal Sign Manual which declared his consent to the limiting of his prerogative with regard to the creation of new peerages.[119] This implied George I's consent to the provisions of the Peerage Bill which his Ministers intended to introduce later that session. In the debate on the motion to Address the Crown in thanks for the communication, the Earl of Nottingham stressed the irregularity of the case, in that 'It was unusual for the King to take notice of any thing depending in Parliament, before the same was laid before his Majesty in a Parliamentary way'.[120] The method of bringing matters to the attention of the Crown was by an Address of the House. On 23 February 1737, Lord Carteret, for the Opposition, moved to Address the King to

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115. Ibid., xxxv, 375-6.
116. E.g., ibid., xxxv, 801(1779); xxxvi, 203-4(1781).
117. E.g., ibid., xxxv, 388,428(1778); xxxvi, 701,711(1783); xxxvii, 34(1784).
118. May, Parliamentary Treatise, p.260. For an example of a document under the Royal Sign Manual, dated 26 July 1800, see H.L.R.O., Records of the Lord Great Chamberlain, Letters and Papers, i, MS.167.
119. L.J., xxi, 84.
120. Torbuck, Debates, vii, 114.

settle the sum of £100,000 per annum on the Prince of Wales. At the end of his speech in reply, the Duke of Newcastle, then Secretary of State for the South, informed the House by the King's command of the communication that had passed between George II and his son on this matter, and he read the correspondence aloud to the assembly. The Government had on this occasion, however, overlooked the advantage of giving the King's message the official seal of authority by having it in writing, and yet they wanted the message and correspondence treated as such, for the Earl of Strafford moved that they be read a second time by the Lord Chancellor. Carteret, faithful to Parliamentary forms, pointed out the procedural error that would thereby be incurred: [121]

> That by the constant form and method of proceeding, it had always been deemed inconsistent with the honour and dignity of that House, to have any papers or writings read a second time by the noble Lord on the woolsack, except speeches or messages made or sent by his Majesty in writing directly to that House. That as for all other writings, or papers, delivered or communicated at any time to that House, if they were to be read a second time, the constant custom had been, to have them read a second time by the clerk at the Table.

The incidental debate on procedure was brought to a close when the House grew impatient to continue with the main debate, whereupon the Opposition acquiesced in having the message read by the Lord Chancellor. The debate on the motion to Address ended in the rejection of the motion by 103 votes to 40, including proxies. [122]

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121. Timberland, History, v, 161-2.

122. Ibid., pp.158-164; Torbuck, Debates, xiv, 374-473; H.M.C. Egmont Diary, ii, 359-60.

In the Protest entered by the Minority, however, they enunciated the principle on which the House's right to communicate matters to the Crown was based, the first paragraph of which read: 'this House has an undoubted right to offer, in a humble Address to his Majesty, their sense upon all subjects in which this House shall conceive that the honour and interest of the nation are concerned'.[123] Hence, even the Marquess of Rockingham was forced in June 1779 to describe as 'an uncommon mode of proceeding' the decision of his party followers to move a resolution censuring any one who advised the King to prorogue Parliament, instead of adopting the normal procedure of Addressing the Crown not to do so. The resolution was moved by the Duke of Bolton in the House of Lords on 14 June 1779, and rejected by 20 votes to 46.[124]

One vote of confidence developed into becoming a Parliamentary institution; this was the Address of Thanks which invariably followed the consideration of the King's Speech at the opening of the session.[125] The Speech from the Throne would be read either by the sovereign or the Lord Chancellor in the presence of members of both Houses assembled in the Lords. When the royal party had retired and the Commons had withdrawn to their own chamber, the Lords heard the Speech read twice more , first by the Lord Chancellor

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123. L.J., xxv, 30-1.

124. Burke Corr., iv, 89 and n.2; L.J., xxxv, 793; Sainty and Dewar, Divisions, 14 June 1779.

125. The official procedure to be followed on the formal occasion of the opening of a new Parliament or session, is given in the Journals of the House of Lords. Further particulars can be found in H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, pp.1-6.

and then by the clerk at the Table. Whereupon the proposer of the Address rose to his feet and, being called upon by his title by the Lord Chancellor, made his motion and included in his speech the 'terms of the Address'.[126] The same procedure was followed for the peer who was to second the motion. A written version of the motion would be delivered by the clerk to the woolsack, and the Lord Chancellor, having read it aloud, then stated the question. Once agreed to in principle, the House appointed a Select Committee to draw up an Address, composed of the peers who had spoken in support of the motion.[127] There were certain rules to be observed in performing this duty, namely that the Address should answer every section of the Speech but was not to refer to any matter not raised in it. The House always stood adjourned while the Committee sat, but reconvened to receive its report. The Address would again be read, paragraph by paragraph, by the clerk and Lord Chancellor before being put to the vote. The Address remained in the Lord Chancellor's possession until the House was notified by the Lords with White Staves[128] of when the sovereign would be ready to receive the Address of Thanks. It was traditionally the Lord

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126. Parl.Hist., x, 888.

127. The only exception found on this point was on the occasion of the first Address of George I's reign when Lord Trevor, at the report stage, spoke against part of the Address drafted by the Committee of which he had been a member; ibid., vii, 45-6; L.J., xx, 32.

128. The 'Lords with White Staves' were the two senior lords of the royal household, namely the Lord Chamberlain and Lord Steward. It was their duty to present an Address in reply to a message under the Royal Sign Manual or if the King's Speech at the opening of a session had been read by Lords Commissioners rather than by the monarch personally (e.g., L.J., xxvi, 8(1736); xxx, 266(1762).

Chancellor's right to print the Address, but one which he also customarily bestowed upon the clerks.[129]

The King usually received the Lords' Address at the palace of St.James, where the Lord Chancellor would be accompanied by such peers as chose to be present. Sir Dudley Ryder has left a description of the ceremony:[130]

> When the lords present Address, the Chancellor attends at the outward door, knocks; the officer attending acquaints the King, who orders them to attend him. The door is then opened, they go in, and the King sits on a canopy. The Chancellor after three bows comes very near to the throne and I think on his knees reads the speech to the King. The King reads his answer. The lords retire backwards, make bows.

The answer from the Crown would be sent at a later stage to the Lord Chancellor and reported by him to the House on the next day.[131]

The Address of Thanks at the opening of a session was a set piece of formality. Both Speech and Address would be known to many peers in advance for, during the reign of George I, it became customary for ministerial supporters in the Lords to be summoned to a private eve-of-session meeting at the private residence of a senior minister in the Lords, similar in aim to that held at the Cockpit in Whitehall for government followers in the Commons, which had become an established feature of Parliamentary politics by the

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129. Cowper Diary, p.8. In 1770, a printed copy of the King's Speech cost one shilling, Caldwell Papers, ii(2), 180.

130. Harrowby MSS., vol.1128, 'Parliamentary and Political extracts from the shorthand legal notebooks of Sir Dudley Ryder, deposited at Lincoln's Inn', 12 November 1747.

131. Cowper Diary, p.8.

early 1720s. The significance of these concomitant practices lies in the evidence they provide for tracing the development of the 'Leader' in the House of Lords and of identifying the minister who filled the role, having responsibility for communicating details of the ministry's policies to its supporters and of organising this Parliamentary following to the maximum effect.[132] In the House of Lords, this function was performed by the senior of the one or more peers who held the office of Secretary of State.[133]

The practice of Addressing the Crown in reply to the Speech from the Throne became an established feature of Parliamentary practice during Queen Anne's reign. It was also customary to choose who would propose and second the Address prior to the debate.[134] On 24 May 1754, the Earl of Hardwicke sent instructions regarding the pre-session duties of a Secretary of State to the new incumbent of the Northern Department, the Earl of Holdernesse.[135]

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132. Recent research into the development of the post has been published by J.C.Sainty in an article 'The Origin of the Leadership of the House of Lords', B.I.H.R., xlvii, 53-73. For a discussion on the evidence of the summons lists, see infra, pp. 249-51.

133. The exceptions were the following First Lords of the Treasury:
the Duke of Newcastle, March 1754 - November 1756 (e.g., B.L.Add. MS.32996, ff.275-9) and July 1757 - May 1762 (e.g., ibid., Add. MS.32999, ff.80-6);
the Duke of Devonshire, November 1756 - July 1757 (e.g., ibid., Add.MS.32869, ff.189,211);
the Marquess of Rockingham, July 1765 - August 1766 (e.g., ibid, Add.MS.32972, ff.176-7);
the Duke of Grafton, August 1766 - January 1770 (e.g., Fortescue, Corr.of George III, i, 411-2);
the Earl of Shelburne, July 1782 - April 1783 (e.g., ibid., vi,171);
the Duke of Portland, April - December 1783 (e.g., his reports of Lords' proceedings, ibid., vi, 354-6, 475).

134. Parl.Hist., vi, 597.

135. B.L.Egerton MS.3431, f.58. Holdernesse was Secretary of State for the South (18 June 1751 to 1754) and for the North (23 March 1754 to 1761).

> As the King's Speech is always put into the hands of the Principal Secretary of State, the same rule holds as to the Speech to be made by the Lords Commissioners, at the opening of the Parliament, by his Majesty's command. As his Majesty has been pleased to approve the enclosed draft, which has been already communicated to your Lordship, I have the honour to transmit it to you, and presume that your Lordship will give the like directions about it, as are usual relating to Speeches from the Throne.

Holdernesse was transferred from the Southern to the Northern department when the Duke of Newcastle was appointed First Lord of the Treasury in March 1754, and although the evidence of the summons lists indicate that the Duke retained responsibility for summoning the Lords at the opening of the session,[136] it is clear that some duties were delegated, by tradition, to his successor as Secretary. Whether Holdernesse made a success or failure of this task is not clear, but the following year Newcastle resumed responsibility for inviting peers to be the mover and seconder of the Address,[137] as had been his custom while Northern Secretary 1748-54.[138] On 14 November 1774, George III recommended to Lord North, his Prime Minister and Leader of the House of Commons, 'the propriety of the Address of the House of Lords being moved by a peer of some degree of weight, as it must naturally contain strong assurances of supporting the authority of the mother-country over its

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136. B.L. Add. MS.32995, ff.242-245: a list of peers summoned to meet at Newcastle's house on 30 May 1754 before the opening of the new Parliament on the following day. The same list was used for summoning peers to the first full session which commenced on 14 November 1754 (ibid., f.347).

137. H.M.C. Polwarth MSS., v, 307.

138. B.L.Add.MS.32724, f.63 (1751).

colonies, and have mentioned Lord Hillsborough as every way answering the above description; he has in consequence wrote, but no answer can as yet have arrived'.[139] The Earl of Rochford was Secretary of State for the South 1770 to 1775 and, as administrator of the Address procedure and the associated practice of summoning the Lords, he was North's counterpart in the Upper House.[140]

The peers chosen for this duty were usually obscure, non-active members of the House and office-holders, but the task might also be entrusted to one who had recently changed his political allegiance and was now called upon to make a public showing of his change of heart. This was the reason for selecting the Earl of Marchmont to move the Address on 11 January 1753.[141] The Address of 27 November 1781 was proposed by Lord Southampton, Groom of the Stole to the Prince of Wales, so as to imply the Prince's approval of the measures of the King's Ministers.[142] The Leaders' correspondence on this point reveal a general reluctance among peers to undertake the work of proposing the Address, their efforts at excusing themselves ranging from a false modesty to claims of ill-health.[143] The Leader of the House needed to be a master of the art of persuasion to win the consent of many to perform this service for the government. It took a considerable degree of coaxing to move Lord Brownlow from his resolution not to accept the invitation to second the Vote of 1 November 1780; Lord Stormont tried his utmost to convince him,

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139. Donne (ed.), Correspondence of George III with Lord North, i,214. The Earl of Hillsborough had been Secretary of State for the American colonies from 1768 to 1772.

140. P.R.O., S.P.37/9, ff.9-12.

141. Walpole, Memoirs of George II, i, 293-4; L.J., xxviii, 5.

142. Walpole, Last Journals, ii, 375-6.

143. E.g., B.L.Add.MS.32930, f.242 (October 1761). B.L.Add.MS.35596, f.187 (1760), [copy of a letter to Newcastle].

arguing that 'The seconder of an Address is at liberty to extend or contract his speech as he thinks fit; and this introduction has generally been considered as the best way of taking an active part in Parliament, and I know that all your Lordship's friends concur in wishing that your Lordship would take such a part'.[144] If so, Lord Cathcart's initiation to Parliamentary politics in November 1753 left much to be desired. The Address was proposed by Lord De La Warr, 'in as Parliamentary a manner as possible, very short, and a very nothing'.[145] Lord Cathcart, who first entered the House the previous session as a Scottish representative peer, then rose to second the motion; he 'seemed to have a mind to make a speech, but did make nothing but bows'.[146] The formality of the occasion and the frequent political incompetence of those chosen to introduce the Address was ably demonstrated on 1 February 1739 when the reply to the King's Speech, which communicated to Parliament the conclusion of the Convention with Spain, was moved by the Duke of Portland who 'slipped over two leaves of his speech, and... my Lord Hobart, who seconded him, was at such a loss that he begged pardon of the House and sat down'.[147]

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144. P.R.O., S.P.37/14, f.334; Parl.Hist., xxi, 810,814. In his report of the occasion to the Earl of Shelburne, Lord Mahon (heir to Earl Stanhope) named the seconder as Earl Ferrers, whom he claimed, performed the task 'without saying one word'. Nor was there any further debate, and his concluding remarks were: 'I never saw anything half so contemptible and weak! It does true honour to the absentees'. Stanhopes of Chevening MSS., U1590/C56.

145. Bedford Corr., ii, 138.

146. Ibid.

147. H.M.C. Egmont Diary, iii, 17.

The King's Speech was intended as a general survey of the past, present, and future problems and policies of a ministry. In November 1740, the Duke of Argyll commented that the Speech had 'always in this House, [been] considered as the Speech of the Ministers, and as it has generally been, we may expect it will always be a short narrative of the measures they have pursued, and a sort of panegyric upon everything they have done'.[148] Later in the same speech, he described the whole practice of Speech and Address as follows: 'The first has generally contained an encomium upon their own measures, and the other has regularly been a repetition and improvement of that encomium'.[149] The practice of drafting the Speech and Address together was a generally acknowledged and well-established convention: on 11 January 1732, the Earl of Strafford acquainted the Earl of Huntingdon that 'tomorrow the elect of our House is to meet at the Duke of Newcastle's to read over the King's Speech and to agree to an Address wrote by the same hand as penned the Speech'.[150] The Rockingham Ministry 1765-6 entrusted the composition of the Speech of January 1766, which dealt entirely with the American issue, to the Attorney General, Charles Yorke, who assured the Marquess that he did not 'think it difficult to pen words for the royal mouth' and implored that the Addresses of both Houses be prepared beforehand also.[151]

In February 1739, November 1740, and December 1741, the Parliamentary Opposition to Walpole's Administration gave a foretaste of

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148. Torbuck, Debates, xx, 5. Argyll sat in the House of Lords as Duke of Greenwich in the British peerage, 1719-43.

149. Ibid., pp.10-11. See also for the whole speech, Timberland, History, vii, 413-8.

150. Huntingdon Library, California, HA 13212 (Hastings MSS.), Strafford to Huntingdon, 11 January 1732 (cf. H.M.C. Hastings MSS., iii, 9).

151. Wentworth Woodhouse Muniments, R1-544.

the resistance the Government would have to face in forthcoming sessions. Their original efforts involved an attack on the format of the Address of Thanks, complaining in particular against the practice of 'echoing back the words of the Crown'.[152] The present form, it was asserted, was an innovation of the last two decades,[153] and attributed directly to Walpole and his colleagues.[154] On all three occasions, therefore, proposals were made for a more concise Address, omitting all repetition of the King's Speech, but consistent with the early forms of the House to return thanks for the Speech from the Throne and offer assurances of their affection and 'zeal for his service'.[155]

On the opening day of the 1740-41 session, the Duke of Argyll, for the Opposition, took the unprecedented step of offering a totally separate Address of the House, one drafted according to 'the ancient method of Addressing',[156] short and couched in general terms. He made a long speech denouncing the modern practice by which the King's 'intended speech [was] communicated by his Ministers to a few lords, before he spoke it in this House, and at the same time they communicated

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152. B.L.Add. MS.6043, f.8 (1 February 1739).

153. Ibid. and Parl.Hist., x, 906(1 February 1739).

154. Torbuck, Debates, xx, 5 (18 November 1740). The Opposition's accusations appear to be substantiated, for the first example of a lengthy Address, answering the Speech paragraph by paragraph, occurred at the opening of the 1722-3 session of Parliament. L.J., xxii, 11,17. The practice of making a Parliamentary reply to the Speech from the Throne originated in 1696. L.J., xv, 679,680,682.

155. Torbuck, Debates, xx, 4 (18 November 1740). For the other examples: Parl.Hist., x, 887,906,929 (1 February 1739); Timberland, History, viii, 19,28 (4 December 1741).

156. Ibid., vii, 413 (18 November 1740).

such a motion, as they thought it would be proper to be made, for an Address of this House by way of answer to that Speech'. [157] He concluded with a defence of his own action, expressing astonishment that 'this House has fallen into a method of expecting and waiting for this motion, as if no lord in this House had a right to make such a motion, but the lord appointed for that purpose by the King's Ministers; and I am still more surprised, that the motion thus made...should for so many years have been approved of by the majority of this House'. [158] To be sure of making his motion, Argyll had risen to his feet to claim his right to speak well before the Lord Chancellor had finished reading the report of the King's Speech to the House. [159] He thus forced Lords Holdernesse and Hyndford, who had been entrusted with the official Government Address, to wait their turn. The Earl of Holdernesse ended his speech by acknowledging his unfamiliarity with the forms of the House, and therefore left it to his fellow peers to decide whether his proposal be taken as a separate motion or as an amendment to Argyll's. The remainder of the debate centred on this procedural issue. Lord Chancellor Hardwicke first argued that Holdernesse's motion was intended as an amendment, in which case the question would first have to be put on this the second motion and, if carried, would have meant victory for the Government. Lord Talbot, however, stressed that they were two distinct motions and, in accordance with the forms of the House, the question ought to be put on the first proposed. This the Lord Chancellor acknowledged, and thereupon advised the assembly that,

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157. Ibid., p.417.
158. Ibid.
159. Coxe, Memoirs of Sir Robert Walpole, iii, 153.

should they wish to proceed to the second motion, the previous question ought to be put on Argyll's.[160] After further debate, this procedure was followed and the question that 'the question first stated shall be now put' rejected by 38 to 66 votes;[161] thereby approving the Government's version for the Lords' Address.

On 25 January 1781, Lord Chancellor Thurlow observed that 'the mode of Parliamentary proceeding...uniformly declared, that when the Crown made any communication to Parliament, either from the Throne, or by message, the speech or message was immediately taken into consideration previous to the discussion of any other business'.[162] It was usual practice, therefore, for the Speech from the Throne to be considered within the first few days of a session, so that Parliament could proceed to other pressing matters, many being subjects raised in the Speech. The Lords, however, did not always debate the Address; report of a debate on the Address of Thanks has been found for only 31 of the 73 sessions between March 1715 and March 1784. The opposition would not know in advance the contents of the King's Speech except what might be leaked to them or gathered from rumour. The Rockinghams armed themselves in readiness to oppose the Address of 8 November 1768 with an amendment concerned with foreign affairs, though full of doubts as to whether it would be relevant or not. No debate, however, appears to have taken place and the Journals note that the Address was approved nemine dissentiente.[1

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160. For a discussion on the procedure of making motions, see infra, pp.365-84.
161. L.J., xxv, 537. For the debate, see Timberland, History, vii, 413-82; Torbuck, Debates, xx, 4-106; Parl.Hist., xi, 613-93; B.L.Add.MS.6043, ff.28-31.
162. Debrett, Parl.Register (2nd.ser.) iv, 51. See also pp.91-4.
163. B.L. Add. MS.32991, ff.399-40; L.J., xxxii, 165.

The occasions on which the question on the Address was forced to a division were even rarer; between 1715 and 1773 there were only ten divisions on the Address of Thanks,[164] and even these occurred on the question of an amendment rather than being a direct negative on the Address as a whole. But in 1774 a new feature emerged in the Lords' proceedings at the opening of the session: throughout the period of the American war, the Opposition peers regularly proposed an amendment to the annual Address of Thanks. In each successive session between 1774 and 1781 the question was taken to a division and, on six of the eight occasions, a Protest was entered in the Journals against its rejection.[165] This innovatory use of the lords' right to protest against the decisions of the House had its rewards, for the published Protests served an effective means of propagating the Rockinghams' views on the American war.

One other factor hindered debate on the Address during the early Hanoverian period: the fear that general approval of a government's policies, as expressed in the Speech from the Throne, would restrict freedom of discussion later in the session. Opposition peers in the debate of 1 February 1739, while agreeing in principle that there should be an Address of Thanks to the King, were anxious that this would not imply approval of the terms of the Spanish Convention intimated in the Speech from the Throne,

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164. This figure includes the two divisions on the Address of 18 November 1740. For further details, see Sainty and Dewar, Divisions.

165. The Annual Register for 1775 confirmed the 1774 Protest to be 'the first we remember to have heard of upon an Address', p.45. On the use of the 'Protest', see infra, p.447.

but as yet not considered in either House.[166] On the same occasion in the next session, the Duke of Argyll stated explicitly the principle which all were concerned to preserve:[167]

> I know, my Lords, it is a maxim, that we are not bound by any thing we can say upon this occasion; notwithstanding any implied approbation of past measures, contained in our Address by way of answer to his Majesty's Speech, we may afterwards strictly inquire into those measures, and freely condemn them, if upon such inquiry they appear to be wrong. This maxim is, indeed, absolutely necessary, as long as we continue in that method of addressing which we have lately fallen into.

Extant reports of debates, however, reveal no inhibitions by peers from raising and discussing issues referred to in the Address. Such expressions were for the most part empty arguments in debate, but which even politicians in the last decades of the century were not averse to use.[168] Nevertheless, it was an important liberty to defend if the House of Lords was to fulfill the role which the peers regarded as their priority function: on 18 November 1740, the Duke of Argyll reminded the House, 'We sit here, my Lords, as a check upon Ministers: it is our duty, as his Majesty's hereditary and supreme council, to inform him, whether he has been ill or well advised or served by his Ministers'.[169]

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166. H.M.C. Egmont Diary, iii, 17.
167. Torbuck, Debates, xx, 6.
168. E.g., Debrett, Parl.Register (2nd.ser.) iv, 52.
169. Torbuck, Debates, xx, 5.

III

THE BUSINESS OF THE HOUSE : LEGISLATION

The most widely recognised role of Parliament is as a legislative assembly; indeed, according to Lord Chancellor Hardwicke, no sitting of Parliament was deemed to be called a 'session' unless some legislation was passed.[1] Bills could be introduced first into either House regardless of subject, with two exceptions: the Commons insisted that they were to be the sole initiators of money bills, while the Lords claimed the privilege that all Acts of Grace and restitution of honour began with them.[2] It was also in practice a generally observed convention that legislation on issues which fell directly under the jurisdiction of a particular House, or affected its privileges, should originate in the assembly concerned.[3] Thus, the Bill to settle the precedency of Lord Lindsey 1715, and the Peerage Bill 1719, were commenced in the Upper Chamber, while those relating to election matters or to the eligibility of persons to be Members of Parliament had their origin in the Lower House.[4]

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1. This was the explanation given by Lord Chancellor Hardwicke to the Duke of Bedford in May 1754 for the necessity of choosing a Speaker for the Commons and of passing legislation even in the forthcoming 'little' session of Parliament, which he forecast would not meet for longer than a week. Bedford Corr., ii, 148-9. The session lasted from 31 May to 5 June and the legislative qualification met by the passing of a Naturalization Bill. L.J., xxviii, 272-3,275.
2. House of Commons resolution of 3 July 1678; House of Lords Standing Order No.90 (2 March 1665); Harrowby MSS., document 21 (part III), 9 April 1747.
3. This was the case unless it proved politically expedient to do otherwise: hence the unpopular Septennial Parliaments Bill 1716 was introduced first in the House of Lords.
4. Hatsell, Precedents, iii, 63n.

Most legislation commenced in the House of Commons for reasons of practicality and convenience. This inevitably meant that much of the Lords' consideration of measures was delayed until the end of a session, when they usually had a back-log of legislation to deal with, a situation which brought regular complaints, generally voiced by the Speaker of the Upper House, not only as to the insufficient time which this allowed for deliberation, but also that it left them with very little to do at the beginning of a session. [5] But there were occasions when it was tactically prudent to initiate legislation in the Lords: this was the case with the government measures of the Jewish Naturalization Bill 1753, and the Quebec Act 1774.

Very little of the legislative business of Parliament was sponsored by the government . Such measures as were can either be classified as routine financial legislation or as statutes necessitated by the exigencies arising from national crises, such as the Act for Disarming the Highlands 1747 and the American legislation of Lord North's Administration. Much of the onus for introducing and guiding bills through their stages in Parliament, therefore, lay on the shoulders of individuals, government, and opposition supporters, who consequently were responsible for the passage of public, as well as private, items of legislation. The 'care and conduct' of the Contractors Bill 1780 through the House of Lords lay in the hands of the Duke of Bolton who was the patron of Philip Jennings Clerke, Member for Totnes, and the sponsor of the Bill in the House of Commons. [6]

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5. See infra, pp.213-5. It was a Standing Order of the House (No.24, 5 May 1668) that all bills were entitled to due consideration and that 'shortness of time' was not to be used as an argument for hurrying their passage along.

6. Wentworth Woodhouse Muniments, R 1-1887. Almon, Parl.Register, xv, 218. Namier and Brooke, The House of Commons, 1754-90, ii, 680.

Most of Parliament's time was consumed by private legislation, which far outnumbered bills of national application. Private legislation comprised personal measures such as naturalization and name bills, divorce bills, estate and enclosure bills; but also measures which were essentially public in nature but which were liable to payment of fees and which had to go through the private bill procedure. This category included bills whose subject matter affected whole localities, such as turnpike bills, bills for the building of churches and bridges, for the navigation of rivers, the trade of the kingdom, and the cleaning of harbours.

Every bill, whether public or private, had to be read three times and given detailed consideration in Committee in both Houses before it could pass onto the statute books. The sole exception was an Act of Pardon, which required one reading only in each House.[7] The occasions for debate and opposition to a measure, however, were not limited to these compulsory and formal stages, but could and did take place on any of the numerous questions to be put on a bill during its passage through Parliament. A study of the Lords' debates and divisions reveals a possible maximum of thirteen occasions for challenging a legislative measure.[8] In addition, opposition could

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7. An Act of Pardon would be brought into Parliament already signed by the monarch. No amendment could be made to the Bill. In the Upper House, the Lords sat with heads bared while the Bill was read, and when called upon to declare their opinion, each peer stood uncovered in his place, and remained standing until the vote had been concluded. An Act of Pardon received the Royal Assent in the same form as public bills. Harrowby MSS., document 21 (part III), 17 June 1747., e.g. L.J., xx, 544,547(1717); xxi, 582, 584(1721); xxvii, 135,137(1747).

8. See the Appendix I for a list of the stages of legislation in the Lords. The Lords' total of thirteen compares with fourteen stages for the House of Commons in the same period. Thomas, House of Commons, p.63.

also occur in Committee, and on a variety of subsidiary motions and amendments.

The instigation of the legislative procedure in the House of Lords rested on a peer's privilege to introduce into that assembly, without prior approval, a bill for its perusal.[9] Thus, on 13 December 1718, Earl Stanhope brought into the House the 'Bill for Strengthening the Protestant Interest in these Kingdoms' which was immediately given a first reading. The Duke of Devonshire's opposition was founded on the irregularity of introducing 'a bill of so great consequence without previously acquainting the House' of his intention of doing so,[10] not upon his right to do so. Notwithstanding the normality of reading a bill for the first time immediately upon its being presented by a peer, the House as a whole did possess the right to refuse an immediate first reading, which was the initial reception given to the Septennial Parliaments Bill on 10 April 1716.[11] In this case, the desire for time to consider the Bill before debating it was satisfied by allowing three days to lapse between the first and second readings, the latter being appointed for Saturday, 14 April.

A peer could also move the House that leave be given to bring in a bill relative to the findings of an inquiry or as the need was determined.[12] The Bill to incapacitate the Directors of the South Sea Company was initiated upon the recommendation of the Committee of the Whole House on the State of the Public Credit, January 1721, and drafted by the judges upon the order of the House.[13] On 18 May 1721,

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9. Harrowby MSS., document 21 (part III), April 1740.
10. Parl.Hist., vii, 569.
11. L.J., xx, 325; Parl.Hist., vii, 295-6.
12. E.g., L.J., xx, 69,75(1715).
13. Ibid., xxi, 395.

the Lords ordered the judges to 'consider of the laws relating to bankrupts; and prepare a Bill, upon the debate, to remedy any defects which may be in the said laws'.[14] The question upon a motion for leave allowed debate very early in the proceedings and provided an opportunity to kill a measure at birth. After the Committee report on the Bill to prohibit commerce with infected countries, 13 December 1721, leave was requested for a bill to repeal part of the Quarantine Act of that year; but after debate the question was resolved in the negative.[15] Later that session, a Bill for this very purpose was brought up from the House of Commons and passed all its stages in the House of Lords between 1 and 9 February 1722.[16]

The Lords had always prided themselves in the superiority of the public legislation which originated in the Upper House due to the legal knowledge and experience of the judges entrusted with the drafting of bills. In his speech opposing the Militia Bill on 24 May 1756, Lord Chancellor Hardwicke traced the Lords' claim to the senior position in the legislative assembly to the practice of summoning the House in a consultative capacity, whereas the Commons were summoned to assent to affairs of state. He deplored the development of late, whereby most laws were first passed by the Commons, who 'being destitute of the advice and assistance of the judges, are too apt to pass laws which are either unnecessary or ridiculous, and almost every law they pass stands in need of some new law for explaining and amending it: and we in this House either

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14. Ibid., pp.522,524. The judges also drafted the second Habeas Corpus Bill of 1758 after the Lords had refused to pass the Commons' Bill of earlier that year; ibid., xxix, 352-3.
15. Ibid., xxi, 629.
16. Ibid., pp.667,670,674,678,679.

through complaisance, or through want of time, are but too apt to give our consent, often without any amendment'.[17] But the pattern, once established, whereby the Commons assumed responsibility for the instigation of most of the legislation that passed through Parliament, could not be reversed. On 20 June 1781, Lord Chancellor Thurlow, speaking in the Committee of the Whole House on the Almanac Duty Bill, restated the charge: he earnestly desired 'that those entrusted with the drawing up of bills, were either more careful or better instructed. The clause struck him as directly contradictory'.[18]

The draft bill would be delivered by the judges to the House and laid upon the Table, where it remained until a peer exercised his right to 'take a bill on the Table and move to have it read'.[19] Bills were rarely opposed at the first reading,[20] but that is not to say that all measures passed this stage unequivocally. Measures which stood no prospect of success were conveniently and summarily

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17. Parl.Hist., xv, 739-40. For Hardwicke's speech, cols.724-46. The Commons had their revenge in 1762 when the Lords attempted to extend to all army officers the provisions of a Bill specifically intended for naturalizing the foreign Protestants who had served with the British forces in America after the outbreak of war in 1756. The Commons refused to accept the amendment, asserting that it was 'far too extensive and important to be introduced by way of amendment to a bill of so limited extent as the present'. Furthermore, they stressed its illogicality, caused by a technical fault in the drafting: 'the amendment proposed must be ineffectual, unless indeed it could be understood to convey, indirectly and by implication, to foreigners at large, a capacity of holding military commissions, which we fully persuade ourselves your Lordships would be as unwilling to propose as the Commons themselves to admit'. L.J., xxx, 237.
18. Debrett, Parl.Register (2nd.ser.) iv,321. In spite of the Lord Chancellor's objections, the Lords made no amendments to the Bill. L.J., xxxvi, 325.
19. Harrowby MSS., document 35(q), 19 November [1754].
20. Standing Order No.23 (1621).

dispensed with at this point in the legislative process. To be 'rejected in the first instance' was the fate of the Earl of Chatham's Bill for settling the troubles in America, 1 February 1775,[21] and the Duke of Richmond's Parliamentary Representation Bill, 3 June 1780.[22]

A bill, after a perfunctory reading by the clerk, would be handed to the Lord Chancellor with a brief or breviate to be read by him, followed by a declaration, 'This is the first time of its reading. Is it your Lordships' pleasure it be read a second time?'.[23] This ushered in the next opportunity for opposition. If sanctioned by the House, this was the appropriate moment for ordering the printing of a bill. Although the printing of public bills had become more common by mid-century, it was not compulsory, being reserved for bills considered to be controversial in nature, and could only be executed on the specific instruction of either House. The Bishop of Worcester clearly thought that the Regency Bill of 1751 was such a case and, on 7 May, he moved that it be printed, to which the Duke of Newcastle on behalf of the Government acquiesced. Less than ten minutes after the question was decided, the whole House changed its mind: 'the Duke got up, and said he was told by lords that it was very improper to print the Bill,' so that the Bishop, now finding himself without a single supporter 'very decently offered to withdraw his motion'.[24] When the Duke of Portland followed the first reading of the East India Company Regulating Bill

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21. Almon, Parl.Register, ii, 24. For the debate, see pp.17-33. L.J., xxxiv, 299.
22. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.36. L.J., xxxvi, 144. See also Malt Bill 1775, ibid., xxxiv, 509.
23. Harrowby MSS., document 35(q), 19 November [1754].
24. Dodington Journal, pp.116-17.

on 9 December 1783 with a motion to name a day for the second reading, he was reminded by a piqued Lord Thurlow, who had been dismissed from the woolsack by the Ministry in which Portland was First Lord of the Treasury, of the proper procedure to be followed: [25]

> [He] was surprised the noble Duke did not proceed in the ordinary course, which was first to move for its being printed, and then to appoint a day for its being read a second time, especially as a bill of such importance ought to be minutely investigated, and taken into the most serious consideration by every noble Peer of that House.

The House satisfied both peers by approving both proposals. [26]

In contrast, the Shoreham Election Bill was neither ordered to be printed nor a date appointed for the second reading when it was read for the first time in the House of Lords on 29 April 1771, and this was taken as an indication of the Ministry's intention to secure its rejection in the Upper House. [27] The Earl of Shelburne consequently sent to the House for the Bill itself so as to give it the careful consideration so recommended at a later date by Lord Thurlow. [28] His action, however, was somewhat premature: the orders to print and to read a second time on an agreed day were made on 30 April and, by 6 May, the Bill had completed all its stages in the Lords without any difficulty. [29]

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25. Debrett, Parl.Register (2nd.ser.), xiv, 17. The East India Regulation Bill of 1773 was also ordered to be printed, as was the Habeas Corpus Bill of 1758. L.J., xxxiii, 669(1773); xxix, 312(1758).
26. Ibid., xxxvii, 18.
27. Chatham Corr., iv, 170-1.
28. Supra, n.25.
29. L.J., xxx, 199-200,201,211-2,213,214-5.

The motion to approve a second reading and the next question to appoint a date for the second reading, were very often combined and, in most instances, provided the first opportunity for debate on a piece of public legislation.[30] There was no mandatory time interval between stages, and the next consideration of a bill could be appointed, therefore, for the following day. The Bill for regulating elections in Scotland 1734, demonstrates the opposition that legislation could encounter at this point: the Bill was debated on 4 April 1734 on a proposal that the second reading be in four days' time. This was defeated upon a division, and the 10 April agreed to instead.[31]

The aim of the second reading was explained by John Croft, Clerk of the Journals in the House of Lords between 1771 and 1797, as follows: 'If any one objects to the general principle of the bill, he ought to oppose it upon the second reading; but if he only objects to some particular clauses, or parts thereof, he should oppose it in the Committee'.[32] No wonder, therefore, that Lord Hardwicke, in notifying Newcastle that the second reading of the Cider Bill was appointed for 28 March 1763, wrote 'and what opposition is made to it must naturally be made then....The House is ordered to be summoned upon that Bill, so I suppose there will be no great difficulty in getting our friends to attend'.[33] The Opposition were mustering, in both numbers and arguments, for the

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30. The Clandestine Marriages Bill of March 1754 proceeded no further than this stage; nor did the Pension Bills of 1732 and 1733. L.J., xxviii, 228; xxiv, 23,194.

31. Ibid., xxiv, 413. The East India Regulation Bill (14 June 1773) was another measure taken to a division on this question.

32. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.25.

33. B.L.Add.MS.32947, f.311.

main debate on the Bill. Similarly, the Duke of Richmond counselled that this stage of the Royal Marriages Bill 1772 would be 'the most proper for opposition'.[34]

The second reading of a bill was also the proper time for hearing counsel on it.[35] The ceremony for admitting them into the chamber has been described by Sir Dudley Ryder, Chief Justice of the Court of King's Bench 1754-6, in a notebook on Lords' procedure, probably made for his own use when acting as temporary Speaker of the Upper House in 1754-5. The counsel, on approaching the Bar of the House, were to make three obeisances to the Chair of State, each of which the Lord Chancellor acknowledged by removing his hat, though he remained seated on the woolsack. Thereupon, without any instructions from the House, he left the woolsack to sit at the clerk's Table, and only returned to his official seat when it was time to order the counsel to retire, 'For no questions are put by him but on the woolsack'.[36]

The House could show complete lack of consideration for the counsel waiting to attend. 15 December 1783 was the day appointed to hear counsel on the East India Company Regulating Bill. Immediately after the reading of the Order of the Day, a lengthy debate arose on a motion made by Lord Loughborough, so that the first witness was not called for until eleven o'clock that night. Calls of 'to adjourn' came from the floor of the House and, finally, a proper motion was made by the Duke of Chandos who begged the House to ponder whether

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34. Rockingham Memoirs, ii, 220.
35. Harrowby MSS., document 35(q), 23 September 1755.
36. Ibid.

it was not being inconsiderate to expect the counsel to proceed 'after the learned gentlemen had been on their legs at the Bar for seven hours, incommoded by the crowd around them, and fatigued with the heat they all felt'.[37] He advised postponing the hearing until the next day. The Lords chose to disregard this plea until Lord Viscount Townshend called their attention back to the question for an adjournment. 'This question,' he stressed 'had been started an hour since...the House had gone into a debate and kept them [the counsel] standing at the Bar a full hour, as little regarded as a couple of hackney coach horses standing at an alehouse door'.[38] Still the House continued to sit, allowing another controversy to arise following Earl Temple's declaration about the King's hostility to the Bill. The House finally rose after a division on Chandos's motion, which adjourned the hearing to the next day.

The examination of witnesses could give rise to some entertaining moments in the House. In early May 1723, the Lords were involved in considering the Bill of Pains and Penalties against Dr.Francis Atterbury, Bishop of Rochester. The interrogation of witnesses lasted for several days and, on 10 May, doubt having been cast on the evidence of a seal engraver, one resourceful peer decided to conduct an experiment. He produced impressions of two different but very similar seals which completely fooled the engraver, who could not distinguish between the genuine and the fake.[39]

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37. Debrett, Parl.Register (2nd.ser.), xiv, 59.
38. Ibid., p.65.
39. Torbuck, Debates, viii, 355. In this instance, the formal second reading of the Bill was taken on 13 May 1723 when the examination of witnesses had been concluded. L.J., xxii, 198.

> This occasioned great altercations between the Counsel on both sides, and warm debates afterwards, in the House, till four o'clock in the afternoon, when the Lords having adjourned during pleasure, the courtiers refreshed themselves in the Prince's Chamber, and the others in the adjacent coffee houses.

At the second reading of the Salted Provisions Bill 16 December 1767, the Earl of Egmont went to inordinate lengths to support his case that the demand for supplies could be met from Ireland. Lord Bathurst described the scene to the Reverend Joshua Parry: [40]

> The House was summoned upon it, and there was a pretty full House...Lord Egmont brought some butter into the Prince's Chamber which I tasted, as many other Lords did. There was some Irish butter at 3^{d}. per pound which I could eat with satisfaction, if I [were] hungry; there was very good at 6^{d}.

The House found the evidence sufficiently convincing to reject the Bill as it stood and allow the House of Commons to bring in another Bill incorporating the amendments desired by the Lords. This was brought up immediately after the Christmas recess, and passed within a week. [41]

If the debate on the second reading could not be concluded in one sitting, the proceedings of the House might be temporarily adjourned and the debate ordered to be resumed on another day. Alternatively, a peer could move that a bill be committed so that

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40. B.L. Loan MS. 57/1, letter 73.
41. L.J., xxxii, 24, 40,41,44,46.

further debate would be reserved until that occasion.[42] The motion to commit was the next stage in a bill's course through the House and was the most frequent stage at which to oppose legislation. There was a total of seventy-five divisions at this stage in the period 1714-84.[43] The most famous measure to be rejected on this question was the East India Regulation Bill 1783.[44]

Public bills, according to the 'rule of Parliamentary proceeding ...should be publicly committed in the body of the House'.[45] The Committee stage was the opportunity for giving detailed examination to a bill, to make amendments by which an unfavourably viewed measure might, in the words of one peer, 'possibly be made a good bill, though a bad one in its present shape'.[46] On no account should a Committee reject a bill. On 12 April 1775, the Earl of Sandwich condemned the conduct of the Committee which had rejected the Braunston Enclosure Bill 'in thus assuming the legislative power vested in the whole House'.[47] No Committee of the Whole House could meet on the same day as the order for commitment was made,[48]

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42. Harrowby MSS., document 29 (part III). These were the alternative arguments put forward by peers for terminating the debate on the Bill for repealing the Occasional Conformity and Schism Acts, on 17 December 1718. The House, on this occasion, favoured the first option. L.J., xxi, 28.
43. This is based on Sainty and Dewar, Divisions (see facsimiles for the sessions 17 March 1715 to 24 March 1784).
44. L.J., xxxvii, 27.
45. Debrett, Parl.Register (2nd.ser.), iv, 174.
46. Fortescue, Corr. of George III, i, 79.
47. Almon, Parl.Register, ii, 105.
48. Standing Order No.26 (28 June 1715).

and thus a measure could be submitted to further debate and division on the question to appoint a date for the Committee to sit.[49] The privilege of naming the day for the Committee lay with the peer who had moved the second reading.[50] Thereupon the House could, if it wished, give instructions to the Committee with regard to the bill referred to it. Motions to this effect were a regular feature of the Opposition's efforts against the annual Mutiny Bills, up to 1738; but none of the questions taken to a division on this point, on any bill, were approved by the Lords.[51] Another debate on a bill could occur on the question to go into Committee following the reading of the Order of the Day introducing the Committee stage.[52]

The Committee began its work by postponing the title of the bill,which was to be considered last. In the debate of 15 April 1735 on the Bill to regulate the quartering of soldiers at times of election, the Earl of Abingdon insisted, 'The preamble in public bills is not to be fixed before the bill;'[53] that this was the regular and correct procedure in an earlier period is substantiated from the diaries of Bishop Nicolson, which provide examples of the title and preamble of bills being postponed simultaneously.[54]

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49. E.g., Election Bribery Bill 1726 (L.J., xxii, 687-8); Wool Export Bill 1731 (ibid., xxiii, 699-700); Royal Marriages Bill 1772 (ibid., xxxiii, 266).

50. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book,p.8; Harrowby MSS., document 35(q), 19 November [1754], 23 September [1755].

51. E.g., Mutiny Bills, 1718 (L.J., xx, 617), and 1738 (ibid., xxv, 185); Salt Duties Bill 1732 (ibid., xxiv, 71).

52. E.g., Public Highways Bill 1767 (ibid., xxxi, 631).

53. B.L.Add.MS.6043, f.3.

54. H.L.R.O., Historical Collection 45, Nicolson Diaries, part II A, 11 January 1703.

The incident of 1735 suggests that this usage of Parliament was no longer always observed, and the sole official source of information for proceedings in Committees of the Whole House, namely the Manuscript Minute Books of the House of Lords, supports this. The Committee on the Mutiny Bill, 21 February 1718, first read the Bill in its entirety, then re-read the preamble to which amendments were made, and agreed to on a division.[55] The same irregularity appears in the Committee proceedings on the Regency Bill, 2 May 1765.[56] The problem, however, appears to have been resolved by the last quarter of the eighteenth century: Lord Scarsdale, Chairman of Committees of the House of Lords 1778-1787, described the practice of the House as allowing the preamble to be read first when it was not intended to amend a bill, but last when amendments were to be made.[57]

Thereafter, the Committee usually proceeded systematically through the bill, considering each enacting clause in turn. A question: 'Is it your Lordships' pleasure that this clause stand part of the bill?'[58] would be put on each and, once approved, could not be reconsidered nor amendment made to a previous part. If an amendment was proposed, the question was put first to agreeing to the change, and then on the clause as a whole. Peers could speak only to the specific phrase or clause debated at the time. New clauses could be added at the end when all the original ones had been considered, but these had to be directly relevant to the

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55. H.L.R.O., Manuscript Minute Book, H.L., lviii, 21 February 1718.
56. Ibid., cxi, 2 May 1765.
57. H.L.R.O., Historical Collection 248, Notebook of the first Lord Scarsdale.
58. Ibid.

business at hand.[59]

As part of its detailed consideration of legislation, a Committee could be empowered to examine witnesses, all of whom would be sworn previously at the Bar of the House of Lords.[60] In June 1781 the Committee of the Whole House on the Isle of Man Bill had first to debate a point of Parliamentary law: whether or not a person who had signed a petition against the Bill could also be received as a witness. Lord Chancellor Thurlow and the Earl of Mansfield, Lord Chief Justice of the King's Bench,[61] respectively led in the arguments for and against the competence of the witness; a question which was eventually decided in favour of the former.[62]

Even the Committee stage of legislation could be a formality should a bill be unopposed and no amendments intended or required to be made. The Lords, therefore, would occasionally decide to commit several such bills immediately after each other, each bill taking up very little of the time of the House.[63] After each sitting of a Committee, its Chairman made his report to the House. If the Committee stage remained unfinished, a peer moved that the Chairman leave the chair and report that progress had been made; when this was done, the House normally appointed another day for its next session.[64] When the Committee had concluded its deliberations, however, and if no amendments were made, the Chairman could

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59. Timberland, History, viii, 232-3.
60. May, Parliamentary Treatise, p.243; e.g. L.J., xx, 368.
61. Mansfield was raised to the peerage when appointed Lord Chief Justice in 1756. He continued to serve as such until 1788, having been created an earl in 1776.
62. Debrett, Parl.Register (2nd.ser.), iv, 336-7.
63. E.g., L.J., xxi, 22.
64. H.L.R.O., Historical Collection 248, Notebook of the first Lord Scarsdale.

present his report, standing at the Table,[65] immediately upon resuming the House. Amendments meant that a bill could not be reported sooner than the following day:[66] but this clause in the Standing Order was no more sacrosanct than any other and, upon the concurrence of the House, the report on an amended bill could be received immediately.[67]

The Chairman of the Committee, in making his report, was required to 'explain to the House the effect and coherence of each amendment,'[68] and the Lord Chancellor had to do the same upon the second reading of the amendment by the clerk. All amendments, therefore, were to be read twice in the hearing of the whole House: at the first reading the clerk read through the list of proposed changes, then each in turn was given a separate second reading and, following a motion, the question 'to agree with the Committee in the said amendment'[69] was put and resolved before proceeding to the next. A bill would then be prepared for its final stages by being engrossed. This meant writing up the text of the bill as it stood after the report stage, including amendments, on a roll of parchment. Bills from the House of Commons would already have been engrossed.

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65. Ibid. Earlier in the period the Chairman could read the report from his place in the House and then hand it to the clerk at the Table (e.g. L.J., xxi, 32); but the Journals do not always specify this to have been the regular practice.
66. Standing Order No.26 (28 June 1715); H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.24.
67. E.g., L.J., xxiv, 423,424(1734); xxxi, 173(1765), 387(1766).
68. Standing Order No.34 (5 April 1707).
69. E.g., L.J., xxiv, 518-20(1735); xxxv, 117(1777).

An engrossed bill now awaited its third reading, which could either be appointed for a named day at the report stage, [70] or could be instigated by a peer taking a bill from the Table and moving that it be read. [71] No third reading was to take place on the same day as the Committee's report was delivered; [72] but providing there was no dissenting voice the House could disregard this rule and proceed with the next stage once moved for by a peer. [73] Although a bill could have been discussed in great length by this stage, it was not too late to propose amendments or to present petitions against the measure, although both were regarded as irregular. Any new clauses proposed at this stage were known as 'riders'; these were to be read three times, [74] and if agreed to, were immediately engrossed on the parchment roll, while simple amendments were written on paper. [75] On 20 December 1775, the Marquess of Rockingham attempted to present a petition by Bristol merchants at the third reading of the Bill to prohibit trade with America. The Duke of Manchester had meant to present it before the Committee stage two days earlier; but he had withdrawn his motion on being assured by Lord Sandwich, the First Lord of the Admiralty, that the objections in the petition would be negated by certain clauses in the Bill. The Earl of Suffolk strongly opposed receiving the petition at the third reading, which he regarded as 'entirely irregular'. [76] As the

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70. E.g., ibid., xx, 334(1716); xxix, 460(1759).
71. E.g., Northamptonshire and Leicester Highways Bill 1722, ibid., xxi, 661,665,668. Land Tax Commissioners Bill, and Tobacco Bill 1778, ibid.,xxxv, 413,416.
72. Standing Order No.26 (28 June 1715).
73. E.g., L.J., xxi, 32(1718).
74. E.g., ibid., xx, 166(1715). The 'rider' proposed to be added to the Protestant Interest Bill 1718 was rejected on the motion it be read a second time, ibid., xxi, 35.
75. Bond, Guide to the Records, p.60.
76. Almon, Parl.Register, v, 162.

Lord Chancellor proceeded to put the question on the motion to pass, Lord Rockingham gave the petition to the clerk 'to hand to the Chair'.[77] But neither was this final effort successful, for the Lords Journals do not record that a petition was presented or read and, technically, therefore it could not have been recognised by the House.

The question 'to pass' invariably followed immediately upon the third reading, the Lord Chancellor having first sought their lordships' pleasure whether to put the question on a bill;[78] that is, on a bill in its final form in accordance with the rule of Parliamentary usage noted by the Earl of Hardwicke: 'When resolutions are come to in either House of Parliament, the opinion of the House is not to be taken from the first resolution, but from the final act'.[79] Debates often arose on this final question, and in view of the comparatively infrequent divisions in the Upper House, divisions on the question to pass were disproportionately common. Nevertheless, in the seventy years under study, only six bills were defeated upon a division at this last stage. All, apart from the Militia Bill of 1756, were lost in very thin Houses; two were rejected by a majority given by proxy votes, and one, the Westminster Paving Bill of 1774, was only lost due to the Parliamentary rule of giving the decision in favour of the Not Contents in divisions where equal votes were cast.[80]

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77. Ibid., p.163.

78. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, pp.8-9. Harrowby MSS., document 35(q), 19 November [1754].

79. B.L.Add.MS.35878, f.45.

80. The six bills and the divisions were as follows: Militia Bill 1756 (Contents (C) 23, Not Contents(NC)59); Restraint of Papists Bill 1780 (C 9, NC 17); Archbishop of Canterbury Estate Bill (C 5, NC 9); Importation of Books Bill 1738 (C 15 + 5 proxies, NC 15 +9 proxies); Borough Court of Record Bill 1782 (C 3+3proxies, NC 5 + 4 proxies); Westminster Paving Bill 1774 (C 5 + 4proxies, NC 7 +2 proxies). The American legislation of 1774 and 1775 also encountered opposition at this stage. Sainty and Dewar, Divisions.

Once passed, a bill was to be carried down to the Commons by the messengers of the Upper House so as 'to desire their concurrence thereunto'.[81] The message concerning a bill which had originated in the Commons was to state that the Lords had passed the bill without alteration, or to desire their approbation of the amendments made.[82] The Upper House assiduously guarded its right to amend legislation, and at times made formal changes simply to exercise this privilege: on 27 April 1744, Lord Chancellor Hardwicke moved that the Committee of the Whole House on the Bill to make correspondence with the sons of the Pretender an act of high treason, be instructed to receive a clause imposing the treason penalty on the descendants of the convicted also. The House approved the motion even though the Commons had already made such a provision in the Bill.[83]

The same procedure would be observed by the Lower House in sending,for the further consideration of the peers, any amendments made to a bill during its passage through the Commons. It was the Lords' practice in such cases to appoint a day for deliberating the new alterations, which would be read three times before a reply was sent to the Commons in the usual manner.[84] If agreed to, this concluded the legislative process and the bills were retained in the possession of the House of Lords to await the Royal Assent, all bills, that is, except money measures which, upon the insistence of the Commons, were to be presented to the Crown by the Speaker of

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81. See infra. pp.526-7. E.g., L.J.,xx,335. The Septennial Parliaments Bill 1716 was delivered to the House of Commons by two judges.
82. Harrowby MSS., document 35(q), 19 November [1754]; e.g., L.J., xx, 377.
83. Debrett, Debates, i, 180-5; L.J., xxvi, 380.
84. E.g., L.J., xx, 623,626(1718); xxxi, 200(1765);xxxiv, 256(1774).

the Lower House. John Hatsell, Clerk of the House of Commons 1768-97,[85] described the procedure as follows:[86]

> The uniform practice, with respect to the returning Bills of Supply from the Lords...has long been, not to send them back by the Masters in Chancery, but for the clerk of the House of Lords to deliver them privately...to one of the clerks belonging to the House of Commons; and if there is any doubt which are, or are not, Bills proper for the Speaker to present, the clerk of the House of Lords, in delivering a list of Bills ready for the Royal Assent, desires that the Speaker would mark in that list which of them appear to him to be Bills of Supply; and those Bills are immediately sent down to the House of Commons.

The legislative procedure for public bills dates from 1487. Prior to that date the procedure demanded that the two Houses first petitioned the Crown for an act to fulfill some purpose. If the petition, which took the form of the preamble in later bills, gained the consent of the Sovereign, it would be delivered to the judges for the drafting of an act to apply the desired measures.[87] The principle of petitioning for an act was retained as the basis of the private bill procedure of the House of Lords, which submitted such legislation to a far more stringently controlled course through Parliament than was given to public bills.[88]

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85. Philip Marsden, The Officers of the Commons, 1363-1965, p.43.
86. Hatsell, Precedents, iii, 144.
87. Sir F.D.Mackinnon, 'A writ of summons to Parliament', Law Quarterly Review, lxii(1946), p.34.
88. Standing Order No.95 (7 December 1699).

At the commencement of every Parliamentary session a day was appointed, between four to six weeks into the session, after which no further petitions for private bills would be received 'unless upon petition setting forth good reasons for that purpose'.[89] The regular exceptions were naturalization and name bills, which could be petitioned for at any time during the session.[90] The purpose of this sessional order was to prevent private business monopolising Parliament's time entirely. A petition was to state explicitly why a bill was being applied for; it had to be signed by all the parties concerned, and it had to be presented by a peer.[91] All private bill petitions were theoretically to be referred to two judges whose task was to consider the plea, examine relevant documents, summon the parties involved to give evidence (these having been previously sworn at the Bar of the House), and obtain their signed consent to the bill.[92] This undoubtedly was a safeguard measure to ensure that all the interested parties were consulted and that no unnecessary fees were charged. After this preliminary stage, a bill with the judges' signed report attached[93] was returned by them to the House

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89. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.22. For a list of the days fixed and the exceptions allowed between 1695-1768, see H.L.R.O., Parliament Office Papers 58/26, 'Private Bills Limited'.

90. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.25; H.L.R.O., Historical Collection 248, Notebook of the first Lord Scarsdale , 'Method of Proceeding upon private bills in the House of Lords'. Henceforth, reference will be made to only one of these as the Scarsdale notebook is almost an exact copy of the entries in Croft's Precedent Book.

91. Standing Order No.98 (19 February 1706); H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.22. Failure to comply could result in the rejection of the petition: e.g., L.J., xxi, 49.

92. Standing Order No.99 (19 February 1706) and Standing Order No.103 (20 December 1706), e.g., L.J., xxi, 406-7(1721).

93. The report would be prepared beforehand by the parliamentary agent for the bill, Lambert, Bills and Acts, p.88.

of Lords and laid on the Table until a peer moved that it be read.[94] The report had to confirm that the bill conformed to the Standing Orders of the Lords, that the consent of all had been obtained, and that in the judges' opinion 'it is reasonable that the same should pass into law'.[95]

In practice, this official method was observed only for estate bills, the presentation of which the Lords sanctioned with the words: 'It is ordered, that leave be granted to bring in a bill, pursuant to the said petition and report'.[96] For all others, 'Leave is usually given to bring in a bill according to the prayer of the petition'.[97] The rule that no private bill could be presented without first obtaining the leave of the House was diligently adhered to, and no irregular proceeding allowed. On 5 July 1782, the Earl of Abingdon rose to address the House on the state of affairs between Ireland and Great Britain, in accordance with the notice he had previously given. He further informed the assembly of his intention to move, some day in the near future, for leave to bring in a bill declaring the right of the British Parliament to legislate for all the countries associated with it. Since the Bill had already been drafted, and considering it relevant to his present subject, Abingdon begged and obtained leave that the Bill be read, which was done by the clerk. He then moved that it be laid on

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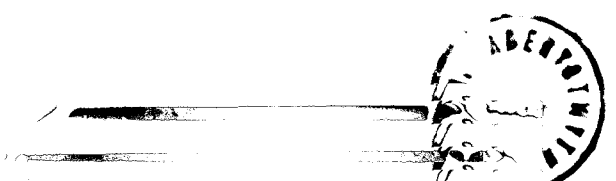
94. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.23.
95. Ibid.
96. L.J., xxxi, 48(1765).
97. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.25; e.g., L.J., xxxiii, 20(1770).



the Table for the perusal of the lords; this, Lord Camden, an ex-Lord Chancellor, reminded the House was quite impermissible, for the Bill could not be tabled 'until leave should have been first obtained (by motion) to bring it into the House'.[98] Technically, therefore, Abingdon's draft bill could not be recognised as such by the House, and it carried no more weight than any other piece of paper evidence that might have been read.

A draft bill was now entitled to begin its course through the House. Until 1742, private bills had to be printed before being given a first reading, with a copy delivered to the Clerk of the Parliaments to be used by the peers, and other copies to each of the parties concerned, or to their representatives if the petitioners were under age. After 1742, this requirement was to be met between the first and second readings.[99] The exceptions to this rule were naturalization and name bills, probably because these had a very limited application.[100] No information as to how many copies the Upper House would order to have printed has been found, but one early nineteenth century manual on the Commons procedure observed that 'as few lords attend, few of the bills are disposed of, but kept by the doorkeepers who sell them in lots every session'.[101]

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98. Debrett, Parl.Register (2nd.ser.) viii, 355-60; Parl.Hist., xxiii, 147-72. Lord Camden was Chancellor from July 1766 to January 1770.

99. Standing Order No.96 (16 November 1705, amended 13 May 1742).

100. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.25.

101. George Bramwell, The Manners of Proceedings on Bills in the House of Commons (1823), p.21, printed in Lambert, Bills and Acts, p.107.

Private legislation could also originate in the House of Commons. These bills first came under the scrutiny of the House of Lords at their first reading; before the second reading, copies of a bill had to be sent to two judges, who had to report their opinion to the House,[102] and failure to observe this order could result in the rejection of the bill.[103] There was no stipulated interval between the first and second readings, but a fortnight had to pass between the order for committing and the day on which the Committee sat, notice of which had to be posted on the doors of the House during this period.[104] Private bills were committed to Select Committees of the Lords, for which the quorum was five.[105] Parties wishing to give their consent to a bill had to appear before the Committee in person or send an affidavit signed by two witnesses to explain his or her absence and declare consent.[106] Trustees also had to attend personally and sign the Committee book as evidence of accepting the trust.[107] Each Committee on a private bill was given a copy of the Standing Orders currently in force,[108] and in his report the Chairman of the Committee was required to attest that all those relevant to private legislation were observed.[109] Should any problem arise, the following procedure was adopted:[110]

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102. Standing Order No.99 (19 February 1706); Harrowby MSS., document 35(q), 19 November [1754].
103. E.g., L.J., xxiii, 279.
104. Standing Order No.94 (20 April 1698).
105. E.g., L.J., xx, 63(1715).
106. Standing Order No.94.
107. Standing Order No.101 (19 February 1706); H.L.R.O. Parliament Office Papers 74/1, John Croft's Precedent Book, p.24; H.L.R.O., Committee Manuscript Minutes, H.L., viii, 4 February 1718, 6 February 1718.
108. Standing Order No.102 (19 February 1706).
109. Standing Order No.101 (19 February 1706).
110. Bramwell, Manner of Proceedings, pp.21-2, quoted in Lambert, Bills and Acts, p.114.

> [The] Standing Order of the House...is usually dispensed with; you [the agent for the Bill] must draw a case to show the reasons for dispensation, and give it to a lord, to move that the Lords may be summoned to take the matter into consideration, which will be ordered for the next or some short day, when upon reading the Order of the Day, the lord who made the motion is called upon to give his reasons for a dispensation; upon which it is ordered accordingly, if the House thinks it reasonable.

Towards the end of a session, the Order stipulating the fourteen days notice before the sitting of a Committee would often be suspended, especially if the pressure of business was particularly heavy.[111] Such requests would most often be made for bills which had been caught in the complex and strict orders of the House of Lords concerning the exchange of lands.[112] Whenever the Lords did approve these requests the grant was always made to each case specifically; there was no general suspension of the Standing Order.

Thereafter, the legislative procedure was the same for private as for public bills.[113] The distinction between the two categories could be marginal at times, for not only did the mass of private bill legislation include some public bills which were required to pass through the private bill procedure, but the reverse was also true as sponsors sought to avoid paying the fees imposed on private measures. These charges supplied some of the financial perquisites for the officers of both Houses of Parliament, from the Lord Chancellor to the doorkeepers. The maximum fees to be charged by

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111. E.g., L.J., xxi, 324,327 (1720).

112. Standing Order No.100 (19 February 1706), replaced by Standing Order No.126 (19 May 1762). E.g., L.J., xxi, 505; xxx, 61,62-3 (1761).

113. For a graphic description of the entire procedure with regard to private legislation, see the original account of Robert Harper, an eighteenth century parliamentary agent, printed in Lambert, Bills and Acts, pp.87-9.

the officers of the House of Lords were regularised on the recommendation of a Lords' Committee in March 1726, who found the fees charged since the last review of the table of fees in 1640 both 'unreasonable and excessive'. The initial fees to be paid before the second reading totalled £27 on a single bill; but no bill was to be charged more than double this, however many persons were involved in it, except that is, naturalization bills for which every person named paid the single bill rate.[114] By an oversight, no mention was made in 1726 of the fee for administering the oaths of allegiance and supremacy to a naturalized person, with the result that, until 1733, none was paid. In that year, the Lords rectified the mistake and made the charges payable to the Clerk Assistant and Black Rod.[115]

In March 1756, the House of Lords found it necessary to define and clarify what was meant by a private bill and which were liable to pay single or double fees. Enacting clauses brought for a private benefit also came into the category, even if inserted into a public bill.[116] The report effectively reasserted the Lords' ruling that no charges higher than those on a double bill be charged by its officers in the majority of cases. In doing so, the House appears to have dismissed the grievances of its clerks that they were at a disadvantage compared with their colleagues in the Commons. Among the papers of the first Earl of Hardwicke is an undated

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114. For the section of the Committee's report which concerned the various fees on private bills, see L.J., xxii, 628, and Appendix II.

115. Ibid., xxiv, 207. These officers were to be paid 13s.4d and 12s.6d, resepctively.

116. Ibid., xxviii, 520.

document entitled the 'Case of the clerks of the House of Lords in relation to fees upon bills'.[117] This indicates that the complaints arose because the Commons' clerks were not restricted by the double bill fees rule as were the Lords' clerks, but could and did accept fees on every separate and additional clause of a bill, as they would be entitled to do if they were all single bills. The document goes on to note that a total of £1513 had been lost to the officers of the Upper House as a result over the last five sessions of Parliament. Moreover, this was exclusive of the fees thus lost by the Lord Chancellor, which amounted to £890.

The grievances incurred by the imposition of fees were also wide-ranging: in August 1773, Benjamin Franklin complained about this very point to Joseph Galloway with regard to the New York Legal Tender Act 1770:[118]

> [it] cost that province £180 being considered as a private Act. It was then intimated to me, that I might upon petition obtain such Acts for each of the provinces I was concerned with; but I thought it a shameful imposition merely to accumulate fees for the officers of the two Houses. The Act to be amended was a public one, and if they blundered in making it they ought to amend it gratis. I therefore, would not apply.

An indication that the House of Lords was acutely aware of the desirability of completing legislation once fees had been paid is revealed in the correspondence of the first Earl of Guilford and

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117. B.L.Add.MS.35878, ff.267-8.

118. Franklin Papers, xx, 341.

his son, the Bishop of Rochester, in April 1769: Guilford advised abandoning the opposition to the Bill for enclosing Middleton Cheyney Common, 'because any alteration made in it by the House of Lords would probably throw out the Bill; to which the Lords will hardly consent unless your Lordship appears to be materially [word later deleted] injured. It is a rule of the Lords when bills are sent up to them so late in the session never to put off Committees so long as to endanger a bill which has been thoroughly considered by the Commons and paid so many large fees, being lost for want of time'.[119]

The difficulty of distinguishing between the public and private nature of a bill could naturally create procedural problems in Parliament. After the first reading of the Bill to allow the heads of Oxford colleges to marry on 10 March 1783, the Earl of Radnor proposed that it be printed. He could envisage no opposition since the Bill was obviously a public one, not having paid any fees in the House of Commons. Lord Chancellor Thurlow opposed the proposal adamantly, basing his arguments on the independent judgement of the House of Lords on legislation:[120]

> though it should be considered by the Commons as a public bill, yet that was no rule for their Lordships' conduct. They had orders for their own direction, which had no reference whatever to those of the Lower House....He contended that the suffering of it to be printed would be a violation of the rules of the House....The right way to deal by the Bill, would be to refer it to a Committee for consideration, as is customary with all private bills.

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119. MSS. North d.12, f.58 (draft letter).

120. Debrett, Parl.Register (2nd.ser.) xi, 99; for the debate, see pp.99-100.

Nevertheless, the Bill was ordered to be printed; but two days later a motion that it be read a second time, on 14 March, was defeated, while the postponement on 28 March of that stage for another four months marked the end of the measure.[121] The ease with which bills could be transferred for consideration from a Committee of the Whole House to a Select Committee, and vice-versa, also reflected the indistinct principles on which bills were classified. The reasons for discharging one Committee in favour of another varied between a recognition of the true nature of a bill and the need to delegate work at the close of a session as the pressure of business became more intense.[122]

According to Parliamentary convention there were two types of private legislation which always began in the House of Lords; these were estate and divorce bills. Estate acts were an efficient means of resolving the complex problems which often arose over the settlement of lands by wills and mortgages and, compared to the cost of other private legislation, they could be obtained quite cheaply.[123] Divorce acts were the secular sanction to previously obtained annulments in the ecclesiastical courts, both stages being necessary to make the divorce legal. These bills inevitably evoked a great deal of public interest, aided by the convention that they were to be committed, as were public bills, in Committees of the Whole House: one observer at the Duke of Beaufort's case in 1744 commented that 'the fact was very clearly and circumstantially proved, to the

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121. L.J., xxxvi, 586,610,612,621,626.

122. E.g., L.J., xx, 625,632 (1718); xxi, 242-3 (1720); xxxv, 224(1777); xxxiii, 205-6, see fourth point of Protest (1771).

123. Lambert, Bills and Acts, pp.110,123-4; e.g., L.J., xxxii, 451 (1770).

great entertainment of a very well filled bench of bishops and a very numerous audience'. [124]

Before any measure which had been passed by both legislative chambers could become an Act of Parliament, it had to receive the assent of the executive part in the constitution, the Crown. The traditional ceremony was one based on longstanding Parliamentary usage. The sovereign, seated on the throne in the House of Lords, commanded the Gentleman Usher of the Black Rod to summon the Commons to attend him in the Upper House, where they came led by their Speaker. It was customary when money bills were to be presented to receive the Royal Assent that the Speaker of the House of Commons be entitled to address the Crown, since these bills were regarded as the particular grant of the Lower House. [125] In July 1746 it was remarked that Speaker Onslow wanted to delay the passage of the last money bill of that session so that 'he may have some pretence for a florid speech at the close'. [126] After his speech, the Speaker delivered the bills to the Clerk of the Crown who laid them on the Table with the others awaiting the Royal Assent, and then read the titles of all. First to be read were the titles of the money bills, to which the Clerk of the Parliaments [127] declared, in Norman French: 'Le roy remercie ses bons sujets, accepte leur benevolence, et ainsi le veult'. [128] Next to be approved were public bills, to which the

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124. Bedford Corr., i, 18; the Annesley Divorce Bill 1725 also caused some 'sport' in the House, H.M.C. Portland MSS., vi, 2.

125. E.g., L.J., xxi, 357(1720); xxxiv, 258(1774).

126. B.L.Add.MS.35423, f.23.

127. If either of these clerks were absent, their places could be taken by others, such as the Deputy Clerk of the Crown, and the Clerk Assistant, e.g. L.J., xx, 235(1715); xxx, 159(1762).

128. On some occasions there would be no money bills to receive the Royal Assent at the end of a session, all having been passed earlier, e.g., ibid., xxx, 404-5(1763).

Royal Assent was signified, 'Le roy le veult'. Finally, private bills were assented to with the words 'Soit fait comme il est desiré'.[129] For an Act of Grace, which had received the Crown's assent before being agreed to by the two Houses of Parliament, the Clerk declared: 'Les prelats, seigneurs, et communes, en ce present parliament assemblées, au nom de touts vos autres sujets, remercient tres humblement vostre majesteè, et prient a Dieu vous donner en santé bonne vie et longue'. In practice, however, these Acts received the Royal Assent with other public bills.[130]

The eighteenth century saw a more frequent use of the practice of passing bills by commission, when the sovereign failed or desired not to attend Parliament. This procedure was first used in 1541. The sovereign issued a commission naming the royal princes and all members of the Cabinet council as being authorised to declare his assent to legislation. The commission was normally executed by three members, the Lord Chancellor, and the two senior peers present who, attired in their robes, sat on a bench at the foot of the throne. The Commons would be summoned to attend by the 'desire' of the Commissioners and, when assembled, the Lord Chancellor, seated in the middle of the bench, informed them of the commission, which would be read by the Reading Clerk. Thereafter, the ceremony continued as usual, but there would be no speech from the Speaker of the House of Commons.[131]

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129. E.g., ibid., xx, 235-6(1715).

130. May, Parliamentary Treatise, p.293; e.g., L.J., xx, 545-7(1717), xxvii, 135-8(1747). There remained one other form of declaration, namely, the royal veto. This was last exercised in 1707 by Queen Anne. The words to be used were 'Le roy [la reyne] s'avisera'. May, Parliamentary Treatise, pp.293-4; L.J., xviii, 506.

131. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book,pp.26-8; B.L.Add.MS.35876, ff.308-9; Harrowby MSS., document 21(part III) 26 May 1747; e.g., L.J., xxvii, 347-52(1749); xxxv, 809-11(1779). In August 1714, the same procedure was followed by the Lords Justices, ibid., xx, 13.

The legislative business of Parliament was one in which the House of Lords and House of Commons co-operated as equal partners. The procedure involved in the passage of legislation, therefore, shed interesting light on the formalities observed by the two Houses in connection with one another. At the turn of the century, the Commons still observed the seventeenth century convention that a bill which had been sent from the Lords had first claim to their attention before any other,[132] this being an act of respect to the authority of a bill originated in the judicial assembly of Parliament. In the Lords, no resolution recommending a reciprocal act of courtesy to Commons' legislation was ever taken, but the peers did possess the right of 'preferring one bill before another'.[133] Throughout the period, however, the Lords allowed no relaxation of the rule that eight members of the Commons had to accompany the messenger delivering a bill to the House of Peers, while the Commons did not fail to use the occasion as an opportunity for measuring the degree of respect shown to their House and of a bill's prospects in the House of Lords. Although no other corroborating evidence has been found to explain his disillusionment, George Onslow was most annoyed with the lack of respect shown to the Bill to Repeal the Stamp Act which was carried up to the Lords on 5 March 1766 and which met 'with not quite so civil a reception as such a bill, so carried in our House, and so conveyed as it was by a hundred and fifty members to the other House, did, in my opinion, deserve'.[134]

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132. Turberville, House of Lords in the Reign of William III, p.95.

133. Harrowby MSS., document 35(q).

134. Rockingham Memoirs, i, 313; L.J., xxxi, 291. The Stamp Act Repeal Bill was passed by the Commons by 250 votes to 122.

Since the late seventeenth century, the House of Lords had finally acquiesced in the Commons' claim of control over money bills. In December 1702, the Whig House of Lords took steps to protect its rights as a legislative assembly against any abuse of this concession to the Commons, and ordered that a new Standing Order be added to the Roll, which condemned and forbad the annexing of any irrelevant clauses or 'tack' to a money bill.[135] This was not a particularly potent issue during the eighteenth century; but on 28 March 1763 three peers entered a Protest in the journals against the infringement of this rule with regard to the Wines and Cider Duties Bill of that year.[136] They claimed that amendments to some clauses in the Bill might hamper others 'less liable to objection, and requiring greater expedition and dispatch'. Moreover, it was asserted that tacks were 'destructive of all freedom of debate, and of all due deliberation, unparliamentary, highly derogatory to the privileges of the peers, and may be of dangerous consequence to the prerogative of the Crown'.[137] The practice that each distinct issue constituted a separate item of legislation, however, had one regular exception, namely that which brought together several unconnected and miscellaneous items into one legislative measure, from which it derived its name, the hotch-potch bill.

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135. Standing Order No.25 (9 December 1702). The significance of the resolution and the farsightedness of the Lords under the guidance of the astute Junto peers, was demonstrated in November-December 1704, when the predominantly Tory House of Commons tried to force the third Occasional Conformity Bill through the Upper Chamber by 'tacking' it to the Land Tax Bill of that year. The Lords kept their resolve, and rejected the Bill. L.J., xvii, 600; Holmes, British Politics in the Age of Anne, p.102.
136. B.L.Add.MS.47584, f.9.
137. L.J., xxx, 381.

The Earl of Chesterfield voiced the Lords' dislike of the measure while debating the army estimates for 1741. He observed that this was an issue which, on previous occasions, had been discussed at the 'appropriating commonly called the hodge podge bill. Indeed it can scarce have too bad a name. It is the greatest violation of the Standing Orders and dignity of the House. And yet you must pass or reject the whole. It were to be wished the House were some way secured from a bill so full of tacks'. [138]

A regular grievance of the Upper House was the pressure put on them towards the end of a session to deal with the vast amount of legislation which had been delayed so long in the Commons. In 1756, Lord Chancellor Hardwicke complained that their function was reduced 'to read over and consent to the new laws they have made: nay some of them are sent up so late in the session that we have hardly time to read them over'. [139] In 1781, Lord Chancellor Thurlow pulled no punches when he openly criticised 'the bringing in bills at the tail of a session, [which] wore in general a very doubtful aspect', suspecting their promoters of deliberate delaying tactics so that 'a bill might be carried through a thin House, which would never have made its way through a full one'. [140] He, therefore, intended to oppose the Isle of Man Bill then being committed, and the new Marriage Bill, on the grounds of the lateness of the session. This view was shared by Brownlow North, Bishop of Rochester, who attributed the failure of his opposition to the Middleton Cheyney Enclosure Bill of 1769 to the tactics of those who 'petition the last day, and bring

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138. B.L.Add.MS.6043, f.59.
139. Parl.Hist., xv, 737-8; for the speech, see cols.723-46.
140. Debrett, Parl.Register (2nd.ser.), iv, 341.

in the bill, as late in the session as they safely can, that the less inquiry may be made into the merits of it for want of time,' coupled with the 'good-natured' convention of the Lords which made them ill-disposed to alter a bill which had already paid large fees in the House of Commons, and thus put it in danger of being lost. [141]

The threat to all legislation that remained uncompleted late in a session was the approaching prorogation of Parliament. A prorogation suspended all Parliamentary business except impeachment by the House of Commons, and this rule was regarded, therefore, as a means of getting rid of unpopular legislation. The original plan for rejecting the Wool Bill of May 1731 was to move for papers, thus delaying its progress and causing it to be lost when Parliament was prorogued. In the event, the Lords decided to postpone further consideration of the measure, after the Committee stage, for another week, 'which...was only a more decent way to dispose of it, since the House would be up before'. [142] On 18 July 1721 the House of Lords was put into Committee on the South Sea Sufferers Relief Bill, at which Lord Townshend warmly opposed Lord Harcourt's proposal that each witness be examined on every single article, as 'it might endanger the loss of the Bill'. [143] The Bill was reported on 24 July, read a third time, and passed on the next day; Parliament was prorogued four days later. [144] If the Bill had not completed its stages by that date it would have been lost and its promoters forced to introduce it anew the following session.

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141. MSS. North d.12, f.63.

142. H.M.C. Egmont Diary, i, 189. The first Peerage Bill of 1719 was thus abandoned, Parl.Hist., vii, 594; L.J., xxi, 130.

143. Parl.Hist., vii, 862.

144. L.J., xxi, 578,579,584.

Contemporary sources frequently refer to the unofficial role of the House of Lords as the rejector of politically embarrassing legislation. Ministries would often allow popular measures with the public to pass the Commons 'trusting [they] would be rejected in the other House, the lords being less exposed to the consequences of unpopularity, as their seats in Parliament are for life'.[145] This was the fate of the Place Bill, the Pension Bill, and the Triennial Parliaments Bill of 1742, the Dissenters Relief Bill 1772, the Contractors Bill 1780, and Fox's East India Bill 1783. After the first reading of the Regency Bill on 29 April 1765, the House of Lords prepared to commit the Bill to regulate the Privilege of Parliament which 'the Ministers had suffered...to pass the Commons, intending to have it rejected by the Lords'. Thereupon, Lord Suffolk moved to put off the Committee for three weeks; Lord Weymouth moved for two months; the postponement was carried on a division, though as Horace Walpole pointed out, this was ' a method seldom used before the Committee had attempted to correct a bill'.[146] The Lords were just as inclined, if not more so, to disfavour a bill because it adversely affected the interests of one of their own members: hence, the Chester Canal Bill 1771 was rejected 'because it would prejudice the Duke of Bridgwater's navigation'.[147]

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145. Walpole, Memoirs of George III, iv, 98, cf. the second Peerage Bill 1719 which passed through the House of Lords in November, only to be rejected by the House of Commons. C.J., xix, 177-8,186.

146. Walpole, Memoirs of George III, ii, 78. Walpole incorrectly believed that Lord Suffolk's motion was approved by the House, whereas the Lords Journals show that Weymouth's motion was taken as an amendment to the first; the question was put on the amended motion and carried. L.J., xxxi, 163.

147. Walpole (Yale) Correspondence, iv, 215; L.J., xxxiii, 209.

Government legislation could take as little as a week,[148] though about a fortnight was normally the case to pass through the House of Lords.[149] Private and local legislation did take longer, mainly because of the time intervals which had to occur between the stages of private bills.[150] Unlike the House of Commons, the Roll of Standing Orders of the House of Lords did include one order concerning the stages of public legislation, but only so far as that no two stages ought to occur on the same day. Standing Order number 26 read as follows:[151]

> Ordered and declared, that for the future, no bill shall be read twice the same day; that no Committee of the Whole House proceed on any bill the same day the bill is committed; that no report be received from any Committee of the Whole House the same day such Committee goes through the bill when any amendments are made to such bill; and that no bill be read a third time the same day reported from the Committee.

This, however, did not prevent a government from rushing its measures through the House by arranging the different legislative stages for

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148. The East India Company Regulating Bill was read for the first time on 11 June 1773 and passed after a third reading on 19 June. This included a time allowance for the Bill to be printed, ibid., xxxiii, 668,673,675,677,678. The East India Tea Bill of the following year passed all its stages in six days between 29 April and 4 May 1774; ibid., xxxiv, 148,151,155,157.

149. The Stamp Act Repeal Bill was passed by the House of Lords between 5 and 17 March 1766; ibid., xxxi, 290,295,300,306,308. The consideration of the Quebec Government Bill 1774 which was introduced first into the House of Lords was read a first time on 2 May 1774 and had completed its course by 17 May; ibid., xxxiv, 151,155,167,184,187,191,197.

150. One bill which broke all these rules was the Cirencester Road Bill of March 1769; ibid., xxxii, 276,281,285,287,289.

151. Standing Order No.26 (28 June 1715).

successive days. The Earl of Hardwicke correctly foresaw that the Chatham Ministry would want to adopt this method for proceeding on the Corn Embargo Indemnity Bill, 1766. [152] But given a degree of emergency, and providing nobody opposed, the entire Standing Order could be overlooked and a bill passed in a day or two. The Bill to suspend the Habeas Corpus Act in July 1715 received all three readings in one day, omitting the Committee stage completely; [153] a similar Bill in 1722 went through all its stages in one day. [154] On 11 December 1777, the Earl of Effingham complained bitterly to his fellow peers that the American Habeas Corpus Suspension Bill of that year, which he had come to the House that day to oppose, had already been 'entered on the books; that the Bill had been read a second time, referred to a Committee, reported, read a third time, and passed all in one day, in defiance of an express Standing Order of the House'. [155]

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152. Wentworth Woodhouse Muniments, R 1-722. The Bill came before the House of Lords on 9,10,11 and 15 December 1766. Parliament adjourned for the Christmas recess on 16 December. L.J., xxxi, 446,449,450,454.

153. Ibid., xx, 127.

154. Parl.Hist., viii, 27-35. The Bill to incapacitate the Directors of the South Sea Company went through all its stages on 19 January 1721 leaving only the third reading and the question to pass for the next day. L.J., xxi, 398,399,400.

155. Almon, Parl.Register, x, 107. Effingham's complaint was made during a debate on Parliamentary procedure following a motion to adjourn for the Christmas recess. The pro-government peers were now insisting on strictly observing the proper forms of procedure to the detriment of the Opposition's case. However, the speech must be regarded with some suspicion, for either Lord Effingham was mistaken about the facts, or the debate has been incorrectly reported. The Lords Journals show Lord Effingham to have been present in the House on 8 December 1777 when the order to commit the Bill was made, but he may have left the chamber before hearing the order that the Committee stage be appointed for the following day. Effingham was absent on the ninth, but present when the Bill received the Royal Assent on the tenth. L.J., xxxv, 264,266,267, 268. For the debate on 11 December 1777, see Almon, Parl.Register, x, 104-8. Effingham's speech is omitted by Cobbett, Parl.Hist., xix, 592-7.

The other category of bills which always received prompt and rapid attention in the Lords was that which concerned the royal family. After the second reading on 14 May 1739 of the Bill of Settlement on George II's younger children, Lord De La Warr moved that it be read a third time, and in a second speech insisted that 'it was very common for bills to pass without being at all committed'.[156] Lord Bathurst, father of the future Lord Chancellor, objected and reminded his fellow peers of the 'Standing Order against it which cannot be dispensed with, but by first summoning the House to consider of it'.[157] On 18 December 1778, Lord Chancellor Thurlow upheld this opinion, declaring 'to depart from that rule, without the full assent of that House, which in fact would amount to a rescinding of the Standing Order, was what, as long as he had the honour of presiding there, he would never consent to'.[158] By insisting on the observance of Standing Order number 26, Lord Thurlow on behalf of the Government, obstructed the Duke of Bolton's motion for an immediate second reading of the Bill for the on-shore trial of Admiral Keppel. Bolton's aim was to have completed all the stages of the Bill in one day.[159]

As the century progressed, legislation consumed more and more of Parliament's time, a feature which is explained by the number of bills introduced and of those which eventually passed into law. In 1711 the total of public and private acts combined stood at 74; in 1811, 128 public and 295 local and private acts were passed.[160]

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156. Timberland, History, vi, 195.
157. B.L.Add.MS.6043, f.15; for the debate, see ibid., ff.14-17; also Torbuck, Debates, xviii, 100-10; Timberland, History, vi, 189-95.
158. Almon, Parl. Register, xiv, 102.
159. For the debate, ibid., pp.101-3; also Parl.Hist., xx, 93-4.
160. Totals quoted from Lambert, Bills and Acts, p.52.

The steady rise in legislation is clearly seen by the first twenty years of George III's reign, when a total of 3896 statutes were approved; the increase was not a constant one; figures rose and fell from session to session, but reached their peak in 1772, with a total of 255 new acts. [161]

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161. H.L.R.O., Parliament Office Papers 354, Precedents Book, pp.92-3.

I V

THE BUSINESS OF THE HOUSE : THE HIGH COURT OF LAW

The judicial powers of the House of Lords in the eighteenth century fell into three categories: jurisdiction in cases of privilege; civil jurisdiction; and criminal jurisdiction. The first two will be dealt with in this chapter, while the Lords' last remaining area of criminal jurisdiction, that of impeachment, will be the subject of the next.

The privileges of Parliament conferred upon both Houses certain rights and powers by which each controlled and governed its own proceedings and its membership. Consequently, the House of Lords possessed the sole right of determination as to what constituted a breach of its privileges, and it had the authority to punish a contempt of the House by imposing fines and an indefinite term of imprisonment. [1] The Lords, therefore, saw their role as the zealous protectors of the rights of individual peers and of the House generally. Since 1712, the House of Lords had abolished the giving of protections by peers, [2] and any forged production and sale of these warranted the punishment of the House on the grounds of it being an offence against the peer concerned and an infringement of the Standing Order of the House. [3] A complaint of a breach of privilege was usually brought to the attention of the House by the peer against whom the offence had been

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1. See Committee's reports on precedents, L.J., xx, 363(1716); xxii, 353-5(1724); xxx, 493(1764). Imprisonment on the order of the House of Commons was restricted to the duration of a Parliamentary session.
2. Standing Order No.67 (7 May 1712).
3. E.g., L.J., xxii, 406-7(1725); xxviii, 210-11(1754).

committed, and in the period 1714-84 the majority of cases involved the publication in the press of libels against members of the House. For example, on 19 March 1764, John Meres and Charles Say, printers of The London Evening Post and The Gazette and London Daily Advertiser respectively, were both fined £100 and ordered to be kept in custody at Newgate prison until payment was made as punishment for printing 'false, malicious, and scandalous' reports of the Earl of Hertford, the British Ambassador to the French Court.[4]

On the opening day of the session 15 November 1763, when the formalities of the King's Speech and Address had been dispensed with, the Earl of Sandwich complained to the House of a publication entitled An Essay on Woman, to which the name of the Bishop of Gloucester had been wrongly ascribed. The work received the censure of the House, being declared 'a scandalous, obscene and impious libel', and a breach of privilege.[5] Witnesses were summoned, and Sandwich, the Secretary of State for the Northern Department, revealed the author to be John Wilkes, M.P. for Aylesbury. A motion of censure against him was withdrawn after Lord Mansfield had insisted that Wilkes ought first to be given an opportunity to defend himself. Horace Walpole judged the management of the incident to be 'worthy of Lord Sandwich, and like him....I do not admire politicians; but when they are excellent in their way, one cannot help allowing them their due. Nobody but he could have struck a stroke like this'.[6] Two days later, on 17 November, the Lords Addressed the King to instigate prosecution proceedings against the author, but they twice

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4. Ibid., xxx, 508,511.
5. Ibid., pp.415-7; Parl.Hist., xv, 1346-51.
6. Walpole, (Yale)Correspondence, xxxviii, 231. For the whole account, see pp.229-31.

postponed further consideration of the affair until the twenty-ninth of that month,[7] the reason being that on the same day as this issue arose in the House of Lords (15th), the House of Commons declared Number 45 of The North Briton to be 'a false, scandalous, and seditious libel' and ordered it to be burnt by the common hangman. Its author, John Wilkes, had already been taken into custody. On 24 November, the Commons resolved that the privilege of Parliament, granting members freedom from arrest, did not apply to the writing and publishing of seditious libels.[8] Five days later, on 29 November, the Lords concurred with this judgement.[9] This was the beginning of the Wilkes controversy that was to rage for the rest of the decade, bringing into question the validity of general warrants, the rights of electors, and the freedom of the press.

The eighteenth century saw an increasing public interest in Parliament which was reflected in the growth of Parliamentary reporting. Since February 1699 it was a clear violation of a Standing Order of the House of Lords 'for any person whatsoever to print or publish in print anything relating to the proceedings of this House without the leave of this House'.[10] Periodically, the House of Lords itself ordered various documents to be printed, such as an Address of Thanks to the King, the speech of the Lord High Steward at an impeachment, and after 1767 the daily minutes of the House were to be published. The Lords' concern, therefore, in taking legal action against newspaper reporters and printers was in preserving the secrecy of their debates. In 1740, a complaint was made in the

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7. L.J., xxx, 420-1, 422.
8. Parl.Hist., xv, 1355-60, 1362.
9. L.J., xxx, 426-9; Parl.Hist., xv, 1365-71.
10. Standing Order No.77 (27 February 1699).

House of Lords against A Complete Collection of Debates in Parliament (both Lords and Commons), etc. in Nine Volumes Octavo, and following a committee of inquiry into the matter John Torbuck, who had admitted being the printer and publisher of the reports, was committed to the keeper of Newgate Prison 'to be by him safely kept during the pleasure of this House'.[11]

The treason trials of July 1746 and March 1747 inspired several reports in the contemporary press. The following month, complaints of this infringement of the House's privilege were made against Robert Walker, Edward Cave, and Thomas Astley.[12] Walker, after submitting an apology for his book on the trial of Lords Kilmarnock, Cromarty, and Balmerinoch, was discharged without further ado, upon payment of his fees.[13] Cave and Astley, respective editors of The Gentleman's Magazine and The London Magazine in which had been published accounts of Lord Lovat's impeachment for treason, were also released after a severe reprimand and upon undertaking not to offend thus again; but only after Cave had been examined by a Committee of Lords to ascertain how the accounts had been obtained.[14] The effect of this action in 1747 was that there were few reports of debates in the following years.

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11. L.J., xxv, 610,615.
12. Ibid., xxvii, 94.
13. Ibid., pp.105,106. A private person committed to the custody of Black Rod had to pay to his custodian a £5 attachment fee, another £5 on being discharged, and £1..6..8 for every day spent in custody. If put in the charge of his deputy, the Yeoman Usher of the Black Rod, both attachment and discharge fees were £2. The fees on the commitment of a peer depended on his rank in the peerage (ibid., xxii, 629). See also infra, Appendix III.
14. L.J., xxvii, 101,107-8. For the procedure at the trials of 1746 and 1747, see infra, Chapter V.

On 5 March 1771, the House of Lords reversed a judgement of the Court of Chancery made in December 1769 with regard to an estate in Yorkshire, and granted the Earl of Portland, the appellant, a new trial before the Court of Common Pleas.[15] Three days later a report of the case and the Lords' debate on the affair appeared in The Morning Chronicle and London Advertiser. The same day, a complaint against this 'false and scandalous misrepresentation of the proceedings of this House' was made to the Lords.[16] William Woodfall, the printer of the paper, was brought before the House on 14 March and, after being interrogated at the Bar of the House, was fined £100 and sentenced to one month's imprisonment.[17] A week later he petitioned the House to be released from prison for, due to the demolition of the buildings where state prisoners were usually accommodated, he had been incarcerated with criminals 'charged with the most heinous crimes'. As a result of the squalour and suffocating conditions he was 'in immediate danger of his health and life', and begged that his suffering be considered 'punishment more than adequate to his offence'. The Lords ordered his discharge upon the payment of both fine and fees.[18] The orders against the reporting of Parliamentary proceedings were never rescinded, but in the last quarter of the century the freedom to do so without fear of prosecution by either House of Parliament became established, both Houses resting quietly confident that should the need arise once more to stop reports they still possessed the most effective weapon for doing so, that is, the enforcement of the Orders against admitting strangers.[19]

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15. L.J., xxxiii, 94.
16. Ibid., p.104.
17. Ibid., pp.113-4.
18. Ibid., pp.125-6.
19. See infra, pp.310-11.

The House of Lords also claimed jurisdiction and right of decision over matters concerning the composition of the peerage.[20] Peerage creations were the prerogative of the Crown 'as the fountain of honour',[21] the modern form of creation being by letters patent under the Great Seal, which simultaneously established the date of the peerage.[22] To take his seat in Parliament, a new peer further required a writ of summons. Ordinarily, where no doubts arose as to a person's right to a writ, as in the case of a son inheriting his father's peerage, the writ of summons was issued as a matter of course upon request to the Lord Chancellor.[23] The King could also initiate one, on receiving a report from the Attorney-General. But with regard to a disputed claim, 'there is not an instance since H[enry] 8 where the Crown has of itself rejected a petition for [an] English peerage without referring it to the Lords'.[24]

The claimant's petition would always be addressed to the Sovereign, who then referred the matter to the House of Lords, both the reference and the original petition being brought into the House by a senior officer of state or household peer.[25] When both documents had been read, the issue was referred for further consideration to the Lords'

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20. H.M.C. Egmont Diary, i, 436; Parl.Hist., vii, 593-4.
21. H.M.C. Egmont Diary, i, 436.
22. MS. Murray 635, Notes on the Duke of Dover's case [1719].
23. E.g., B.L.Egerton MS.2136, ff.61-2. The Lord Chancellor could himself hold an inquiry, independent of the House, before issuing a writ if there was any doubt about the validity of the claim, e.g., Harrowby MSS., document 9 B, p.43.
24. Ibid., document 21 (part III), 4 March 1747 and 9 April 1747.
25. Lord Viscount Townshend who had recently resigned as Lord Lieutenant of Ireland but who held several honorary offices, presented the Somerville petition 25 May 1717; as did the Duke of Newcastle, Northern Secretary, for the earldom of Stair dispute, 9 March 1748. L.J., xxi, 214; xxvii, 181. See also P.R.O., S.P.35/48, f.106. Carteret was Southern Secretary,1721-4.

Committee for Privileges, with the order that it report its opinion to the House. This Committee, thereafter, proceeded to hear counsel, examine witnesses, and receive the evidence that claimants presented in support of their claim, being free to meet on however many occasions as was necessary to conclude the business.[26] After debating the case under consideration the peers present in the Committee, which was open to all the members of the Lords, came to a resolution, decided upon by a division if necessary,[27] which was ordered to be reported to the House. This would be done by the Chairman of the Committee, either on the same day or on the first opportunity allowed by the schedule of business, and was invariably ratified by the House. Thereupon, the resolution and judgement were ordered to be presented to the Crown by the Lords with White Staves.[28] A successful claimant could then apply for a writ of summons and take his rightful place in Parliament.[29]

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26. E.g., compare: The Atholl case 1764 was resolved in one sitting of the Committee, 7 February 1764. H.L.R.O., Committee for Privileges Minute Books, vi, 1-4.
The Oxfurd case: the Committee met six times between February and April 1735; ibid., iv, 49-50,53,54,55.
The Sutherland case: the petition of the first claimant was presented on 3 December 1767. The Committee sat on various occasions in each session between 1768 and 1771, until theissue was finally decided on 21 March 1771; ibid., vi, 28-9,45,116, 124,125-6,126-7,128-9.

27. Ibid., iv, 45.

28. An account of any one peerage case can be pieced together, including the proceedings in Committee, from three main sources: e.g., Earldom of Stair 1748, L.J., xxvii, 181,182,186,198,215, 226,227; H.L.R.O., Proceedings on Claims of Peerage 1605-1836, p.279; H.L.R.O., Committee for Privileges Minute Books, v, 5-8. Earldom of Cassillis 1760, L.J., xxix, 628,629,636,644,663; xxx, 54-5,74,124,144; Proceedings on Claims of Peerage, p.117; Committee for Privileges Minute Books, v, 8-9,14-15,23-27,28.

29. E.g., Norborne Berkeley's claim to the Barony of Botetourt was upheld by the House on 10 April 1764, and he took his seat on the thirteenth. L.J., xxx, 561, 572.

In March 1767 the House of Lords declared that, from 1680 to 1765, the holders of the title Baron Willoughby of Parham had 'sat contrary to right and the truth of the case', [30] and now granted the petition of Henry Willoughby to the title and its honours. Henry Willoughby was the direct descendant of the second son of the second Baron Willoughby, which line was assumed to be extinct when the tenth baron died in 1679, and the inheritance wrongfully devolved on the descendants of the fifth son of the second baron. [31] His first petition was presented and read in the House of Lords on 1 February 1734, the very day that Hugh Lord Willoughby took his seat in the House. [32] The death of this last de facto lord of the junior line in 1765 led to a new claim by Henry Willoughby who, following the Lords' decision in his favour on 20 March 1767, took his seat five days later. [33]

The Willoughby of Parham peerage case gave rise to two new Standing Orders of the House of Lords. The first of these, made on the very day that the above issue was finally determined, stipulated that printed cases of each peerage claim, including an abstract of proofs, and quoting the grounds on which the claim was based, had to be delivered to the House fourteen days before any hearing could be held. [34] Two months later, the Lords agreed to a Committee recommendation that an up-to-date list of the peers and peeresses of the kingdom be regularly kept by the King's heralds and pursuivants. Garter King at Arms should be required to attend

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30. Ibid., xxxi, 530.
31. Complete Peerage, xii (Part II), 712-6.
32. L.J., xxiv, 336.
33. Ibid., xxxi, 530,537.
34. Standing Order No.128 (24 March 1767).

in the Upper Chamber whenever a peer, whether by creation or descent, was introduced and, at the same time, to lay on the Table a pedigree of the peer's family. Furthermore, every peer and peeress was free to prove his or her pedigree before the Committee for Privileges; finally, to compensate for their 'care, expenses, [and] trouble' in assisting to draft and deliver the proofs of pedigree, the herald could charge a fee of £20 from each peer and peeress.[35] The avowed intention of these Orders was clearly expressed in the preface to Standing Order 129, to achieve 'the most proper means effectually to ascertain the descents of the peers of this kingdom, so that the Crown or this House may not incur the risk of being imposed upon by any ill-founded claim of peerage'.[36]

Of the 36 peerage claims brought before the House of Lords between 1714 and 1784, 21 of these involved Scottish titles.[37] Since the Union of 1707 the Scottish peerage were represented at the Westminster Parliament by sixteen delegates. Thereafter the British House of Lords had complete jurisdiction over matters relating to the peerage in Scotland[38] as well as over the election of the sixteen. Part of the problem in dealing with Scottish disputes arose from the indeterminate nature of the peerage, for there was no extant roll of the Scottish peerage as it had stood in 1707. In June 1739, therefore, the Upper House of Parliament ordered that the list be

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35. Standing Order No.129 (11 May 1767).
36. Ibid.
37. These totals are arrived at by counting each claim as separate, though three peerages had two or more claims submitted on them during the period.
38. Harrowby MSS., document 21 (Part III), 3 March 1747.

revised.[39] The new roll, presented on 11 March 1740, took account of the titles attainted after the Jacobite rebellion 1715 and thenceforth was periodically amended, omitting those attainted for treason, adding those revived after years in abeyance.[40]

Scottish issues featured prominently in peerage affairs during the early Hanoverian period, and particularly matters concerning the election of the sixteen. The Peerage Bill of 1719 would have increased their number to twenty-five, who would have an hereditary right to a seat in the House of Lords, thus limiting the representation to these families and allowing no addition to their midst unless one of the original peerages became extinct. Not unnaturally, this proposal encountered widespread opposition from the peers of the North.

Discontent with the procedure of electing the sixteen, and accusations of malpractice, were common. In March 1734, prior to the dissolution of Parliament, efforts were made to reform the procedure: on 6 March a motion that the election be held by ballot was rejected by 63 votes to 96.[41] Two weeks later a resolution condemning any attempt to influence the election by threats and bribery was defeated by a similar margin.[42] The new Parliament met for business on 14 January 1735. The following month, a group of six Scottish peers[43] petitioned the House of Lords against the

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39. L.J., xxv, 416.
40. Ibid., p.477; Fergusson, The Sixteen Peers of Scotland, p.27.
41. L.J., xxiv, 366.
42. Ibid., p.378. The division figures were 43 against 73, plus 17 and 26 proxies, respectively.
43. The petitioners were: the Duke of Hamilton and Brandon, the Duke of Queensberry and Dover, the Duke of Montrose, the Earl of Dundonald, the Earl of Marchmont, and the Earl of Stair.

'undue methods and illegal practices' perpetrated in the recent election of the sixteen representative peers.[44] When the petition was considered by the House on 20 February, Lord Hardwicke proposed that the petitioners be desired to affirm whether they meant to controvert the seats of those elected or not. The Duke of Bedford, who had presented the original petition, read a document avowing that this was not the petitioners' aim. The House, however, chose to regard this as an 'oral declaration' which it could not accept 'consistently with its usual and proper forms... [for] as the petition was in writing and signed, so an explanation of it must come the same way'.[45] On a division it was decided to adjourn further consideration of the issue to the following day, and that the petitioners be ordered to provide a proper answer. On 21 March, Lord Chancellor Talbot[46] acquainted the House that the petitioners had complied with the order, whereupon the Duke of Devonshire moved that they be directed to cite instances of the illegal practices of which they complained and to name the offenders.[47] Their lengthy answer was delivered to the House on 27 February; but the following day, after a debate, the House resolved that the Scottish lords had not satisfactorily complied with the order, and their petition was dismissed.[48]

The procedure for the election of the Scottish representatives to the Upper House of the Westminster Parliament was laid down by two Acts

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44. L.J., xxiv, 459 (13 February 1735).

45. Hervey, Memoirs of George II, ii, 145; L.J., xxiv, 465.

46. Talbot was Lord Chancellor of Great Britain from 29 November 1733 until his death on 14 February 1737. He was created Baron Talbot of Hensol on 5 December 1733.

47. L.J., xxiv, 466.

48. Ibid., pp.471,475-7. For an account of the affair in Parliament, see Hervey, Memoirs of George II, ii, 144-7.

of 1707 and 1708.[49] The second of these, that of 6 Anne, c.22, prescribed that a person who held both a Scottish and an English peerage should sign his list of chosen representatives, or his proxies, by his Scottish title. In 1747, Lord Willoughby de Broke applied to Lord Chancellor Hardwicke to be sworn by his title of Earl of Carrick so as to be able to vote in a forthcoming election of the Scottish peers. There being no such title on the roll of Scottish peers in 1707, the Lord Chancellor insisted that though 'he could not deny his being sworn...he should give no certificate but that his Lordship, Lord Wil[oughby], claiming to be a Peer of Scotland, was sworn'.[50] Furthermore, Hardwicke advised Sir Dudley Ryder, the Attorney-General, to tell his Lordship publicly that he had no right to vote until his claim to the title had been approved following an application to the Crown and House of Lords. Lord Willoughby de Broke, however, appears to have been punished for his honesty, for Ryder later discovered the procedure that was usually followed:[51]

> Solicitor General told me that many had been admitted to vote at such elections who had no title on their applying on such a title, but if more than one apply as owners of the title, the Lord Registrar admitted which he thought pleased to vote, leaving it afterwards for determination in the House of Lords.

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49. Fergusson, The Sixteen Peers of Scotland, pp.13,17-18.
50. Harrowby MSS., document 21 (Part III), 9 April 1747.
51. Ibid. Ryder's legal career included the Offices of Solicitor-General (1733-37), Attorney-General (1737-54), and Chief Justice of King's Bench (1754-56).
The Solicitor-General (1742-54) was William Murray, later Lord Mansfield.

The House consistently tried to avoid such disputes by denying claimants the right to vote in the elections until their claim to a Scottish title had been settled beyond doubt. [52]

The grievances of the Scottish peers over their subordinate status since the Union was exacerbated by the Lords' resolutions disabling the former from sitting in the Westminster House of Lords, even if they received new British peerages. In January 1709, the House of Lords took into consideration the objection made by the Duke of Hamilton at the time of the peers' election of 1708 to the vote of the Duke of Queensberry, who earlier that year had been created and had taken his seat as Duke of Dover. The resolutions of 21 and 22 January 1709 denied a Scottish peer, also possessing a title in the British peerage since the Union, a right to vote in person or by proxy in an election of the sixteen representative peers. [53] Two years later, the Duke of Hamilton was created Duke of Brandon in the peerage of Great Britain, but before allowing him to take his seat the Lords decided to consider his patent, which debate resulted in another resolution: 'That no patent of honour granted to any peer of Great Britain, who was a peer of Scotland at the time of the Union, can entitle such peer to sit and vote in Parliament, or to sit upon the trial of a peer'. [54] The injustice of the situation was the more apparent

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52. E.g., L.J., xxx, 131(1761), 209(1762); xxxv, 27(1776).

53. Ibid., xviii, 609,611.

54. Ibid., xix, 346 (20 December 1711). For a discussion of the political significance and the motivation for this ruling, see Holmes, 'The Hamilton Affair of 1711-12 : A Crisis in Anglo-Scottish Relations', E.H.R., lxxvii (April 1962), pp.257-82.

since the judges, though summoned, were not consulted upon the issue. A Protest against the judgement was entered in the journals by nineteen members of the House of Lords, eight of whom were English peers, showing that it limited the royal prerogative, violated the fourth article of the Treaty of Union which guaranteed equal rights to the subjects of both kingdoms, and brought the Scottish lords 'to a worse condition, in some respects, than the meanest or most criminal of subjects'.[55] No protestation nor the illogicality of the resolution could obstruct its effect. In January 1720, the third Duke of Queensberry was refused a writ of summons as Duke of Dover although his father had been ipso facto member of a Parliament by that title.[56]

At the time of the Duke of Hamilton's original complaint in 1708, the Earl of Marchmont also protested against the right of English peers to participate in the election of the representative lords by virtue of their Scottish peerages. This grievance was dismissed by the House of Lords and was never again disputed, their inherent right to do so being implied in the ruling that their votes be signed according to their Scottish titles.[57] This enabled contemporaries to develop the means of evading the discriminatory resolution of 1711. No rule prevented the son and heir of a Scottish peer being raised to the British peerage in his father's lifetime, for the inheritance of the Scottish title would not

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55. L.J., xix, 346-7.

56. Ibid., xxi, 196. For the proceedings, see ibid., pp.167,168, 170-1,174,179,192,196; H.L.R.O., Proceedings on Peerage Claims, p.144. See also Mar and Kellie MSS., S.R.O., GD 124/15/1197/3.

57. See supra., pp.130-1.

deprive him of his own seat in the House of Lords.[58] No amount of effort, nor the King's favour, could gain for the Scottish Earl of Bute a British peerage entitling him to a writ of summons, and he was obliged to seek admission to the House of Lords by the only way possible, as one of the elected peers.[59] In 1776, however, his son, styled Lord Mount Stuart, was created Baron Cardiff of Cardiff Castle, thereby becoming a member of the Upper House in his own right.[60] The Barony of Mount Stuart had been bestowed on the Countess of Bute in 1761 with remnant to the heirs male of her marriage to Lord Bute. Fears that their son might inherit the Scottish earldom before the British barony and thus again be prevented from taking his place in the House of Lords, led to the conferring of the new dignity in 1776.[61]

The discriminatory resolution against the Scottish lords was finally rescinded in 1782, the family prominent at its instigation being involved again at its end. In May 1776, the Dowager Duchess of Hamilton (widow of the sixth Duke, 1743-58) was created Baroness Hamilton of Hameldon in the peerage of Great Britain. The intention was to eventually provide her second son, who had succeeded his brother to the Dukedom in 1769, with a seat in the House of Lords. The inconsistency with the reasons for creating the Cardiff peerage appears to have been overlooked at the time; but in 1779 this

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58. E.g., 31 December 1711 Viscount Dupplin, son and heir of the Earl of Kinnoull was created Baron Hay of Pedwardine. 24 May 1722 the son and heir of the Duke of Roxburghe was created Earl Ker. 22 December 1766 the Marquess of Lorn, son and heir of the Duke of Argyll was made Baron Sundridge. L.J., xix, 356(1712); xxiii, 451(1731); xxxi, 455(1767).

59. Sedgwick, Letters from George III to Bute, pp.48-9.

60. L.J., xxxiv, 739.

61. For the details, see Complete Peerage, ix, 364.

eighth Duke of Hamilton petitioned George III for a writ of summons as Duke of Brandon, the British title bestowed on the family in 1711.[62] The report of the Attorney-General, Alexander Wedderburn,[63] set out the resolutions involved and the precedents arising from previous Scottish peerage cases, and concluded by confirming 'that the descent of a Scotch honour creates no incapacity to take by descent a British peerage, nor does it extinguish any right vested by a prior creation'.[64] The petition and King's reference were brought before the House of Lords on 14 June 1781, but the claim was not considered until 5 and 6 June 1782 when the judges' opinion that 'the peers of Scotland are not disabled from receiving, subsequently to the Union, a patent of peerage of Great Britain, with all the privileges incident thereto', was endorsed by the House.[65] Douglas, Duke of Hamilton and Brandon was introduced to take his seat by the latter title on 14 June 1782.[66]

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62. See supra., p.132.

63. Wedderburn, himself a Scot, was Attorney-General from 1778 to 1780. On 14 June 1780, he was created Baron Loughborough,and promoted to the Earldom of Rosslyn 21 April 1801. Complete Peerage, xi, 172-5.

64. P.R.O., S.P.37/13, f.79. The piece is entitled 'Mr.Att[orne]y General's report upon the petition of Douglas Duke of Hamilton and Brandon, 31 May 1779', ff.76-81.

65. L.J., xxxvi, 515,517.

66. The eighth Duke of Hamilton inherited the Hamilton barony in 1790. On his death in 1799 the barony devolved on his step-brother, George William Campbell, second son and heir of the fifth Duke of Argyll whom the Dowager Duchess of Hamilton had married in 1759, for the succession to the barony was limited to the male heirs of her body. The other Hamilton honours were inherited by the uncle of the eighth duke. The fifth Duke of Argyll (1770-1806) was the person created Baron Sundridge in 1766. See supra, n.58.

The House of Lords' jurisdiction over peerage claims also involved determining a peer's precedence among his fellow lords.[67] This was usually decided by the date of creation of the peerage, the older the date, the higher the precedence.[68] The last peerage created higher in precedence than its date, was the life peerage of the Duchess of Dudley in 1644,[69] though an associate of the Earl of Egmont claimed in 1733 that Anstis, Garter King at Arms, could give 'above 30 instances where the King has by his order placed lords of later creation above others of the same rank of older date'.[70] The principle underlying this procedure was to be found in Standing Order 86, whereby in 1628 the Earl of Banbury, an elderly and childless peer, was afforded a higher degree of precedence over peers of a more ancient creation' so that he may enjoy it during his time'.[71] The grant carried the King's assurance that the case would not be used as a precedent for future digressions from the rule. This Order was to be read at the beginning of every session of Parliament, though the Journals never record such an event, but it was observed as a guide for each issue of precedence. In September 1759 the Earldom of Warwick,bestowed upon the family of Rich in 1618, became extinct with the death of the eighth earl. Two months later, a new patent granted the title

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67. For an example of the procedure of determining a peerage's precedence, see the case of Hugh, Lord Percy, who took his seat in the Lords on 20 November 1777. H.L.R.O. Parliament Office Papers 354, Precedent Book, pp.113-14; L.J., xxxv, 249.

68. B.L.Stowe MS.750, f.306. The precedence given to a senior peerage was reflected in the official seating order of the House of Lords. See infra., p.291.

69. Complete Peerage, i, 471.

70. H.M.C. Egmont Diary, i, 444.

71. Standing Order No.86 (10 April 1628).

to Francis Greville, Earl Brooke of Warwick Castle (a creation of 1746). When the new Earl heard that objections were being voiced with regard to his second title, he approached the Earl of Hardwicke with the proposal 'that as he must now be called over B[rooke] and W[arwick] inseparably in the House, he may instead of it be called over W[arwick] and B[rooke], and that as in the Earl of Banbury's case, every junior earl may, as then was practised, be asked for their consent for this seeming precedence given', though he stressed that he wanted none higher than that which his first title gave him.[72] This suggestion aroused so much ill-humour that Warwick wisely let the matter rest.

The judicial business of the House of Lords was a feature unique to the Upper House of Parliament. Its authority could be invoked in two ways: either by writs of error, or by a petition of appeal. The Lords' jurisdiction in error had been established since the fourteenth and fifteenth centuries. Writs of error could be brought from the Courts of King's Bench and of the Exchequer Chamber, and from the common law part of the Court of Chancery in England. The Lords also had ultimate authority over the Irish common law courts: writs of error from the King's Bench in Ireland lay either to its English counterpart or to the Irish Parliament and, from there, to the Westminster House of Lords. The roots of this jurisdiction dated to the Middle Ages. The extent of the Lords' legal jurisdiction as the Supreme Court of Appeal was not complete, however, until the last quarter of the seventeenth century when, after the

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72. B.L.Add.MS.35596, ff.82,84.

Parliamentary and legal disputes and wranglings of 1675-7, the Commons finally acquiesced in the Lords' appellate authority over the equity side of Chancery. A similar cognizance over Irish equity cases was established later in the same century. This legal structure was challenged in the early eighteenth century when the Irish House of Peers appropriated to itself the right of determination over the verdicts of the lower courts in Ireland, the test cases being those of Annesley v Sherlock 1717-18 and Lord Dudley and Ward v Brabazon 1720. The threat was quashed by the Declaratory Act 1719, by which the British Parliament reasserted its jurisdiction which it retained until the Repeal of the Act for Securing the Dependence of Ireland Act 1782,that granted legislative independence to the Irish Parliament, and the Irish Appeals Act 1783 that transferred all appellate jurisdiction from the British to the Irish House of Lords. After the Union of 1707, complaints of error in the Scottish law courts also lay to the House of Lords, but its right to settle appeals against interlocutory orders was only established in 1726.[73] Never, however, did the House of Lords exercise or claim power over any of Britain's colonial settlements and conquests, a precedent to which Benjamin Franklin pointed as à priori proof of America's independence of the British Parliament.[74]

Judicial authority was vested in the Lords not as a House of Parliament but as a Court of Law.[75] The prominence accorded to its judicial function was reflected in the Roll of Standing Orders of

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73. Holdsworth, A History of English Law (7th edition), i, 365-75.
74. Franklin Papers, xv, 235.
75. Harrowby MSS., document 21 (Part III B).

the House of Lords, twenty-three of which (as the Roll stood in 1784) governed the conduct of legal business. But the lords were no less prone to vary their orders on appeals than those concerning any other business of the chamber.

A writ of error was the means of bringing within the cognizance of the House of Lords a case in which an erroneous judgement was alleged to have occurred in one of the Courts of Common Law. A judicial writ was to be issued by the lower court involved to the Chief Justice of the court, whose name had to appear on the writ.[76] Normally, several writs of error would be brought into the House at the same time, though not necessarily so, and presented 'in the usual manner'; so the Lords Journals note, though no account of the procedure has been found.[77] The judges were not de jure members of the House; consequently, on 18 May 1716, Lord Parker[78] who had been created a baron on 10 March 1716, sought the ruling of the assembly as to whether he could still present a writ of error from the Court of King's Bench, as was his duty as the Lord Chief Justice of that Court, the implication being that it was now beneath his dignity to do so.[79] The House of Lords ruled that he could, and thus set the precedent enabling Lord Mansfield to do so also during his tenure of the same office, to which he was appointed on 11 November 1756, the same day as he too was raised to the peerage as a baron. The Journals show that nothing prevented him from

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76. P.R.O., 30/8/83, f.75.

77. E.g., L.J., xxxii, 31.

78. Parker was Chief Justice of the King's Bench between 1710 and 1718. On 12 May 1718 he was appointed Lord Chancellor.

79. L.J., xx, 363.

performing this responsibility even on the days when he also sat as Speaker of the Upper House.[80]

The Lords were not blind to the possible abuse of this process as a means 'to delay justice rather than to come to the determination of the right of the cause'.[81] Therefore writs of error were to be prosecuted without delay; payment of the appropriate fees to the officers of the House was to be made by the plaintiffs,[82] who had another eight days in which to assign their errors after the delivery of the writ and the transcripts of the court proceedings to the Clerk of the Parliaments; failing this, the case would be dismissed.[83] The court transcripts would be returned to the lower court after being examined. If a plaintiff alleged any diminution in the case records and requested a writ of certiorari he was entitled to execute the latter without a further petition to the House of Lords, having ten days to do so. If at the end of this period the court records had not been brought up to the House, the writ fell void and the defendant in the case could proceed as if no certiorari had been issued. The clause relating to writs of certiorari in Standing Order 54 was supplemented in 1717 by another Order granting the plaintiff a certificate that a complaint of diminution had been filed.[84]

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80. E.g., L.J., xxx, 271,272. Lord Mansfield was acting Speaker of the House of Lords by virtue of the King's commission for two periods during the century: in October 1760, and from January 1770 to January 1771.

81. Standing Order No.54 (9 December 1670).

82. See infra, Appendix III.

83. This was the almost inevitable fate of cases in which the plaintiffs were given less than eight days in which to assign errors; e.g., L.J., xxiv, 123,126(1732); xxx, 93(1761), 272(1762).

84. Standing Order No.105 (21 February 1718).

Litigants in the equity courts had five years after the original hearing to decide whether to petition for an appeal before the Lords against the court's decision.[85] The House could, if it wished, dispense with the Standing Order for particular cases and accept petitions presented beyond the time limit, as in the cases of Lord Dudley and Ward 1736, and Jane Vernon 1740-1.[86] The petition of appeal on equity cases theoretically had to be presented within fourteen days of the opening of the Parliamentary session, after which none others were to be received;[87] unless, that is, the House of Lords ordered otherwise during a particular sitting of Parliament. Appellants then had a fortnight to present their petitions after the Lords' decree was registered in the courts of equity for England and Wales, twenty days for Scotland, and forty for Ireland. This provision was made when the Standing Order was revised in 1715. At the same time, the judges advised against imposing any time limit for receiving writs of error, for whereas a case in equity was suspended only by the receiving of an appeal, the very issue of a writ of error was sufficient to delay a case in the common law courts. Therefore, for the House to refuse to receive a writ of error would merely be to prolong the state of inaction, and hence favour the party 'who studies delay'.[88] In practice, the House of Lords continued to accept new appeals for most of the session until at some stage, usually in March or April as the pressure of other business mounted, it was considered

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85. Standing Order No.118 (29 March 1726).

86. L.J., xxiv, 619,622; xxv, 522,656.

87. E.g., ibid., xx, 181(1715); xxv, 132(1737). The order that the petition be rejected was often accompanied by a clause that no prejudice would be held against another petition for appeal in a subsequent session. Rather than ordering its rejection, the House could also grant the petitioner leave to withdraw his plea, e.g. ibid., xxi, 37(1718).

88. Ibid., xx, 83

necessary to appoint a date after which no more petitions of appeal would be received.[89] For the two very short sessions 27 June to 17 July 1727 and 10 May to 28 June 1768, the House of Lords ordered that no appeals or writs of error be received at all.[90]

A petition of appeal had to be presented by a peer.[91] As a safeguard against 'frivolous' and time-wasting appeals, the Lords had ordered that all appeals had to be signed by the counsel employed in the lower courts or those who would argue the case at the Bar of the House of Lords.[92] Furthermore, before any answer was given by the respondent in the case, the appellant had to provide financial sureties or 'recognizances' to the sum of £100 to be used to pay the respondent's costs should the judgement of the lower court be affirmed.[93] Failure to do so within eight days of lodging the appeal would result in the dismissal of the case.[94] It had been the custom of the House that recognizances be penned on stamped paper or parchment, but this was discontinued upon the recommendation of a Lords' Committee in March 1726.[95]

At the time of receiving the petition for appeal, the Lords also appointed a day by which the respondent in the case was to submit his answer. All answers were to be endorsed with the date on which they were delivered to the clerk and the names of the parties to be

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89. E.g., ibid., xxi, 214(1720), 688(1722); xxx, 80(1761).
90. Ibid., xxiii, 148; xxxii, 155.
91. E.g., B.L.Loan MS. 57/1, letter 83; L.J., xxxii, 205.
92. Standing Order No.58 (3 March 1698).
93. Standing Order No.61 (27 January 1711). On 4 March 1727 the sum was raised to £200, L.J., xxiii, 195,201,202.
94. E.g., ibid., xx, 471(1717); xxiii, 201(1728).
95. Ibid., xxii, 629.

entered the same day in the journals.[96] If the time limit expired and no answer had been received, the House, on receiving proof by affidavit that the respondent had been notified of the order,[97] thereupon named a peremptory day to receive the same, though no further notice would be given to the respondent.[98] Failure to comply by this final date meant that the case would be given a hearing ex parté, in the absence of the respondent.[99] The latter, however, was allowed to bring a cross-appeal before the Lords should he wish to amend his answer in any way, and at the opening of the period there appeared to be no time stipulation for doing so. On 12 November 1722, the respondents' request for leave of the House to present a cross-appeal was made by counsel during the hearing of the appeal, in the case of White et al. v Lightburn et al.[100] But a few years later the Lords ordered that revision requests ought to be made within two days of presenting the original answer.[101] The ruling was not made a Standing Order of the Lords until 1763 when the time allowed was extended to a week.[102] No doubt this was done in order to halt the irregular practices that had arisen in the intervening period, such as that on 29 November 1762 when a respondent petitioned the House that his cross-appeal be heard at the same time as his original answer.[103]

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96. Standing Order No.109 (5 April 1720).
97. H.L.R.O., Parliament Office Papers 58/26, Miscellaneous Papers.
98. Standing Order No.106 (19 January 1720).
99. Mar and Kellie MSS., S.R.O., GD 124/15/1197/4.
100. L.J., xx, 33.
101. H.L.R.O., Historical Collection 251, George Rose's Precedent Book, f.146; see also L.J., xxiii, 57.
102. Standing Order No.127 (10 March 1763).
103. L.J., xxx, 298.

Appeals to which answers had been submitted but which had not received a date for a hearing before the session was terminated, were to be prosecuted again by either of the parties involved within eight days of the commencement of the following session of Parliament, or stand dismissed.[104] The same rule applied to appeals to which no answers had been presented the same session.[105] Some confusion, however, must have remained for, on 6 November 1721, it was explained in the House that the specified number of days in Standing Orders 55, 107, and 108 referred to those immediately following the meeting of Parliament, and not to the number of sitting days.[106] The Lords could, of course, dispense with the time limit for a particular session if they deemed such action advisable or necessary;[107] similarly, the limit could be extended, and instances of this occur in particular if the expiry date fell during an adjournment of the House, whether over a week-end or for a longer recess.[108] In March 1735 it was decided that, if a session of Parliament were to be brought to a close before the time allowed a respondent to answer a petition expired, he was to be given at least five weeks notice of his responsibility to present his answer within three days of the commencement of the next session, while the appellant had the right to apply in advance for the House to appoint a peremptory day for receiving the same, should the respondent fail to comply.[109]

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104. Standing Order No.107 (5 April 1720, amended 5 April 1734).
105. Standing Order No.108 (5 April 1720).
106. L.J., xxi, 600.
107. E.g., ibid., xxi, 589(1721); xxviii, 275(1754); xxxii, 154(1768).
108. E.g., ibid., xx, 259(1716); xxviii, 287(1754); xxxi, 232(1766); xxxii, 403(1770); xxxv, 14(1776). The last example demonstrates that the eight days were calculated from the first day of business in the House - in this case, 1 November 1776, whereas Parliament met on 13 October.
109. Standing Order No.123 (28 March 1735).

When all these orders had been observed, the appeal case was entitled to be heard before the House. Technically, a cause day was one for which the Lords had appointed the hearing of a specific case, which could be any or every day of the session.[110] But in a narrower sense it referred to the particular days appointed by the House on which appeals would regularly be heard. The purpose of such an order at first was to enable the House on cause days to systematically work through the list of causes postponed from the previous session, while the cases introduced in the current session would receive a hearing on any day that the Lords saw fit to choose.[111] But as the session wore on and public and legislative business accumulated, the Lords could if necessary extend the order and restrict all their legal matters to certain days, thus leaving the remainder free for the consideration of other affairs.[112] Monday, Wednesday, and Friday were usually chosen as the cause days,[113] though the House was at liberty to appoint as many or whichever it wished, even a Saturday.[114] Should it become necessary for the House to put off a hearing, it was customary to order 'the other causes [be] removed one day in course also'.[115]

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110. E.g., L.J., xx, 565(1717), 574(1718).
111. E.g., ibid., xxi,305(1720); xxv, 7(1737).
112. E.g., ibid., xx, 586,588-9(1718). Compare May 1720 when the pressure of legal business still pending led the House to order that causes be heard de die in diem, ibid., xxi, 325.
113. E.g., ibid., xxi, 11(1718); xxiii, 456(1730), 594(1731).
114. E.g., ibid., xx, 455(1717); xxiii, 9,29(1727); xxii, 360(1724).
115. Ibid., xx, 581(1718).

The order in which causes were given a hearing was a major concern of contemporaries. Duncan Forbes, the Scottish deputy-advocate 1716-25, had been confident on 19 January 1720 that the two appeal cases with which he was concerned, namely those of Kenneth and Alexander Mackenzie and of Thomas Erskine, both against the Commissioners of Forfeited Estates in Scotland, would receive dates for a hearing; but his hopes were dashed by Lord Sunderland, the First Lord of the Treasury, and other court peers 'who insisted on it that the appeals should be heard in the same order in which they were lodged'.[116] No other evidence to support this claim is known of, and it may simply have been an attempt at obstruction at the time for, four days later, Forbes could joyfully report that the 'case of the Protestant heir and of Lord Erskine' were to be heard before all others.[117] In the latter part of a session, as an increasing amount of time was consumed by legislation brought up from the Commons, the Lords were often obliged to suspend entirely the judicial business depending in the House for the remainder of the session. This could be done without any previous notice, the order taking effect immediately,[118] or after the next few causes 'in course' had been heard.[119] The earliest convention of the House regarding the reappointment of postponed causes such

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116. Mar and Kellie MSS., S.R.O. GD 124/ 15/1197/5.

117. Ibid., GD 124/15/1197/6; L.J., xxi, 206. The Mackenzies' case was heard on 10 February 1720; the decree of the Court of Session in Scotland was reversed, and the Mackenzies ordered to be relieved of their property (ibid., xxi, 227).
Thomas Erskine's case was brought on two days later, but on 15 February the judges delivered an opinion that the Lords of Session in Scotland had had no jurisdiction to try the case in the first place, and their sentence was therefore declared null and void (ibid., xxi, 230,232).

118. E.g., ibid., xx, 521(1717); xxxi, 188(1765).

119. E.g., ibid., xxiii, 101(1727), 433(1729); xxix, 151(1757).

as these was 'to set down those which have been the last postponed to be the first heard next session'.[120] In 1734, the Lords reviewed this practice and ordered that henceforth all appeals left undecided at the conclusion of one Parliamentary session were to be the first heard in the following session, when they should be brought on in course every Monday, Wednesday, and Friday, commencing on the first Monday after the opening of the Parliamentary term.[121] This Standing Order remained on the Roll only until 8 June 1749, when it was replaced by one setting forth the same process, except that the first case was to be heard on the Wednesday of the week following the opening week of the session, the remainder to be taken in order on succeeding Fridays and Mondays.[122] Furthermore, if one party failed to attend the new hearing, the case would thereafter be heard ex parté, whereas if both parties proved to be absent the appeal would stand dismissed.

The manner of obtaining a date fixed for a hearing was for the respondent, in an appeal case, to seek the assistance of a peer to 'move the House to have the first cause day vacant from other causes appointed for hearing the appeal'.[123] Once approved, the hearing could not be postponed except on petition to the House; which would only be received if attested on oath that two days notice of this intention had been given to the other party.[124] There was no

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120. H.L.R.O., Historical Collection 251, George Rose's Precedent Book, f.147.

121. Standing Order No.122 (5 April 1734).

122. Standing Order No.124 (8 June 1749).

123. Mar and Kellie MSS, S.R.O. GD 124/15/1197/4. e.g., L.J., xx, 567(1717); xxx, 8,15(1760).

124. Standing Order No.60 (22 December 1703). The House itself, however, could postpone hearings on very short notice; e.g., L.J., xxxi, 118(1765).

Standing Order governing the appointment of bye-days, but should either party request an earlier day for the hearing than that given by the House, it was the Lords' practice that no motion of the kind be granted on the day it was made, but that another day be appointed to consider the merits of the plea.[125] On 10 March 1732 it was moved that no bye-day be appointed unless two days' notice had been given to the other party; but five days later the House decided against changing its practice, and reaffirmed its earlier orders.[126]

The printed cases of both appeals and writs of error had to be delivered to the Clerk of the Parliaments or the Clerk Assistant and distributed by the doorkeepers to the peers two days before the hearing. After 28 February 1764 this had to be observed four days in advance.[127] To curb the distribution of 'scandalous and frivolous' copies to the lords, the printed cases were to be signed by the counsel who had pleaded the case in the lower courts, or by those appearing for the parties at the hearing.[128] Infringements of these Orders carried severe penalties: the respondent in the case of Lord Kingston v Badham was reprimanded by the House on 10 March 1730 for printing, in his case, words that had been struck out previously by counsel.[129] John Chilton, plaintiff in a writ of error, was found guilty of high misdemeanour and breach of privilege of the House on 21 May 1773 for assigning his counsel's

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125. E.g., ibid., xxiii, 49(1727), 201(1728).
126. Ibid., xxiv, 44,49.
127. Standing Order No.117 (12 January 1725, amended 28 February 1764); L.J., xxii, 628.
128. Standing Order No.59 (19 April 1698).
129. L.J., xxiii, 501.

name to the printed case without the latter's consent, for which Chilton was ordered into custody.[130]

On the appointed day, the cause was to be brought on 'precisely at eleven o'clock'.[131] This Standing Order of 1715 supplemented that of a decade earlier when efforts to organise the House's daily proceedings on business resulted in the Order that no private bill should be read prior to the hearing of the legal case appointed for that day.[132] Two years later the Lords reaffirmed both Orders after making an empty censure on their own conduct in noting that neither Order had been 'strictly observed' of late.[133] In a reconsideration of the Roll of Standing Orders undertaken in 1742 the Lords amended that of 1715 so that causes would be 'the first business proceeded on after Prayers'.[134] This was an implicit acknowledgement of a tendency that was becoming more and more established in the practice of the House, that of proceeding to business later than 11 a.m. which, according to the Lords Journals, was the hour of convening the House throughout the period 1714-84.[135]

In 1728 the House of Lords formalised the manner of conducting a hearing at the Bar of the House.[136] One of the counsel for the appellants was to open the cause, following which the evidence in

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130. Ibid., xxxiii, 648-9.
131. Standing Order No.62 (28 June 1715).
132. Standing Order No.97 (18 January 1706); H.L.R.O., Historical Collection 45, Nicolson Diaries, part 4B, 14 January 1706.
133. L.J., xx, 451. This was a complaint which periodically appeared in the Journals, e.g. xxx, 175(1762).
134. Standing Order No.62 (amended 13 May 1742); B.L.Add.MS.6043, f.120.
135. For a discussion of this point, see infra., p.347.
136. Standing Order No.119 (4 March 1728).

support of their case would be read and another counsel allowed to bring the matter to a conclusion by making 'observations on the evidence'. Exactly the same procedure would then be observed by counsel for the respondents, after which one counsel for the appellants would be heard in reply. The House did not care for long drawn-out trials, and complaints were made that 'counsel... very frequently argue foreign to the point; by reason whereof, such hearings are extended to an unreasonable length'.[137] On 22 January 1731, therefore, the House restated and expanded a resolution made in 1715: 'That the Lord on the woolsack acquaint the counsel, "It is expected by the House, that they speak as concisely as the nature of the case will admit; that they keep close to the matter; and that the second counsel do not repeat what the first hath said" '.[138] The Scottish advocates were at an added disadvantage in that they were not always understood by the English: one report of Robert Dundas, the Scottish Lord Advocate 1720-25, was that he 'spoke more quick than they use to speak here, and as his language was less understood than could be wished for, several of the lords ceased to listen with that application that became a decent audience, and fell a talking with one another'.[139]

In both instances between 1714 and 1779, where no counsel appeared for the appellant, the decision of the House went against him.[140] No resolution of the Lords prescribed that litigants had to have

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137. L.J., xxiii, 594(1731).
138. Ibid., xx, 84,90(1715); xxiii, 594(1731).
139. Mar and Kellie MSS., S.R.O. GD 124/15/1197/9.
140. L.J., xx, 73(1715); xxxii, 532(1770).

counsel, but a Standing Order of 1685 forbad the Attorney-General and assistants of the House to serve as counsel in private causes.[141] Yet there appears no shortage of examples when the senior government law officers did plead private cases before the Lords: Sir Philip Yorke, Attorney-General from 1724-34, represented Dr.Bentley in the case of Bishop of Ely v Bentley on 6 and 8 May 1732.[142] A decade later, on 7 May 1742, when Yorke himself sat on the uppermost woolsack as Lord Chancellor Hardwicke, an objection was made to Sir Dudley Ryder, Attorney-General 1734-54, acting as counsel to Lord Kingston in the appeal case of Kingston v Damer brought from the Court of Exchequer in Ireland.[143] Hardwicke overruled the objection on the ground that the restriction only applied to an assistant who had 'taken his place on the woolsacks as such'.[144] A week later, on 13 May 1742, the House of Lords revised several of its Standing Orders, among them being number 63 which was amended according to the interpretation given it by the Lord Chancellor. Thomas Secker, Bishop of Oxford, who attended that day's proceedings, noted with regard to the amendment that, 'Originally the Attorney and Solicitor were not allowed to be members of the House of Commons, but they have been I think since Q[een] Eliz[abeth]'s time though this disqualified them from sitting as assistants in the House of Lords'.[145] Another category also of the assistants of the House

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141. Standing Order No.63 (13 June 1685).
142. H.M.C. Portland MSS., vi, 42; L.J., xxiv, 115,116.
143. H.M.C., Portland MSS., vi, 116-7.
144. Standing Order No.63 (amended 13 May 1742).
145. B.L.Add.MS.6043, f.120.

of Lords played an important role in the determination of causes. These were the judges of the lower courts of law. They could be summoned to be consulted on points of law, or to be asked for their opinion. If they reached a unanimous verdict, the senior judge present would deliver their opinion to the House;[146] otherwise the question would be put to each judge individually, and each be heard in turn; a procedure which could be staged over several days.[147]

The role of the House of Lords was to affirm or reverse the judgement of the lower court. The party who lost at the hearing would then be ordered to pay costs, in default of which he or they would be taken into custody.[148] In 1728, the sum was fixed at no less than £30.[149] On 19 April 1739 the House of Lords made it clear that the costs awarded on Irish, as well as all other, appeal cases were to be paid in the 'lawful money of Great Britain'.[150] Continued non-payment could result in an order that the offender be detained from one session to the next, until the fines were paid.[151] In March 1727, following the dismissal of his appeal to the Lords, a certain Arthur Squire was allowed ten days to pay costs or forfeit his freedom. Three years later the respondent in the case still had not been compensated; consequently it was ordered that the original recognizance of £100 be estreated into the Court of Exchequer for the benefit of Dowall, the respondent. A few days later, on 13 May

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146. E.g., L.J., xx, 465,466(1717); xxvii, 546(1751); xxxiv,686(1776).
147. E.g., ibid., xxxiv, 23-4,26-7,29-30(1774); B.L.Add.MS.35399, ff.282-3.
148. E.g., L.J., xx, 55(1715), 499-500(1717).
149. Ibid., xxiii, 188,195(19 and 24 February 1728).
150. Ibid., xxv, 358.
151. E.g., ibid., xx, 643,661(1718) and xxi, 130(1719).

1730, Black Rod's deputy, William Marsham, petitioned the House praying reimbursement of the expenses incurred by him in maintaining Squire in custody, a sum which far exceeded the money he had received. The House, however, simply reasserted that Squire should continue to be held in custody until both costs and fees had been paid.[152] To bring an appeal before the House of Lords was an expensive affair for, apart from the costs to be paid if the case was lost, the clerks and officers of the House were also allowed to charge fees for any and all the necessary services provided at every stage of the legal proceedings.[153] As a result, the very threat of an appeal probably influenced many to settle out of court.

When a cause had been given a hearing and the Lords had come to a judgement, the House issued an order accordingly; in the case of an appeal from the equity courts, it was either that the petition be dismissed and the sentence of the lower court affirmed, or that the sentence be reversed according to the plea.[154] In the case of a writ of error, a copy of the Lords' judgement was attached to the transcript of the records and returned to the lower court from where it was referred with an order that the Lords' decree be enforced immediately.[155] Finally, should one of the parties request a rehearing, his petition could not be read in the House on the same day that it was presented. When this Order was made in 1695, another day was to be appointed for considering the request when the matter would be raised after twelve o'clock.[156]

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152. Ibid., xxiii, 58,557-8,574.
153. See infra.,Appendix III.
154. E.g., L.J., xxiii, 624(1731); xxix, 608(1760).
155. E.g., ibid., xxiii, 606(1731); xxix, 240(1758).
156. Standing Order No.57 (14 February 1695).

Much of the time of the House of Lords was taken up by its judicial work, a large part of which was brought from the Scottish courts, this being the result of an abuse of the Lords' order of 19 April 1709 implementing an immediate stay of execution on causes in the Scottish courts upon the service of an order on a respondent to answer an appeal.[157] Yet in spite of the specialised nature of the business involved, all the members of the House had a right to vote and participate in the determination of legal affairs. This encouraged the lobbying of peers, especially since the litigants were required by the Standing Order of 1724, and probably before that date, to provide each peer with a printed case briefly explaining their arguments. On the day of the hearing, the supporters and friends of the parties involved might also attend the House and crowd the lobbies and ante-rooms if not fortunate enough to gain admittance into the debating chamber. In 1782, when the idea of erecting a gallery in the House of Lords was once more being mooted, a Lords' Committee proposed that it be used to accommodate persons attending appeal hearings; but this was rejected by the House.[158]

The evidence of the presence lists of the Lords Journals suggest that cause days were fairly well attended by peers, much depending on the time of the year; but only a few of those present on a given day participated in a division on a cause.[159] The attendance could be augmented if the case was of constitutional interest, as

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157. L.J., xviii, 713.

158. Ibid., xxxvi, 524-5,533-4 (12 and 18 June 1782).

159. E.g., 21 January 1719, Webber v Farmer, 15 votes cast, 75 present; L.J., xxi, 50. 29 April 1729, Sparrow v Shaw, 17 votes cast, 71 present; ibid., xxiii, 408. 11 May 1778, Horne v the King, 24 votes cast, 56 present; ibid, xxxv, 476.

that of Annesley v Sherlock, 111 peers being present on 24 May 1717 when the Lords' Committee gave its report on the case, or if the hearing occurred close to or on the same day as an expected debate on important legislation. Otherwise, many if not most peers would only attend if they had a personal interest in the affair. Lord Bathurst intended to attend a cause in the House in January 1767 for the first time in three to four years, being spurred to do so because 'upon inquiry [I] find that either he [the defendant] or his father was a godson to me...and if I can discover any the least symptom of partiality on the side of the city, I will attend in behalf of my godson to the last moment'.[160] The case was on a writ of error brought by the Chamberlain of the City of London against Allen Evans who, having been elected to an office in a Corporation, had refused to serve because he had not taken the Anglican communion. A question concerning his right to object was put to the judges who differed in their opinion, but the majority being in Evans's favour, the decision of the lower court was affirmed.[161] Bathurst, for all his avowals, never attended Parliament for the case.

Lord Bathurst did, however, have a high opinion of the House of Lords as a court of law. He assured his correspondent, the Reverend Joshua Parry with whom he discussed the Evans case of January 1767, 'that for 56 years past whilst I have been a member of that assembly, I can assert with the greatest truth that justice has been there administered with more impartiality than in any court in Europe that I have heard of'.[162] A similar expression of

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160. B.L.Loan MSS. 57/1, letter 71.
161. For the Lords' proceedings, see L.J., xxxi, 458-9,461,470,475.
162. B.L.Loan MSS. 57/1, letter 71.

confidence in the fairness of the Lords was made by Thomas Erskine, Lord Grange, in a letter to the Earl of Marchmont dated 24 December 1734.[163]

> Your Lordship heard the cry, very loud here, that our judges acted very unequally and that politics rather than law determined the Bench, and that one thought to be of the Country party could hardly expect justice. I hope it is not so in the House of Lords to which the cause is now to go; and indeed an appeal was unavoidable. I perceive the other party has great hopes and boasts much of his acquaintance and interest among the Lords. But I believe your friend may get better justice among them than here....[The] point of law which in my humble opinion is so strongly against your friend's adversary that I cannot think your friend has reason to fear the House of Lords. A judicatory so illustrious must take care at least of their reputation, which some inferior courts I see have learned to neglect as well as much better things, law and justice.

The lack of interest exemplified by Lord Bathurst in the judicial matters of the Lords was further reflected in the overall unconcern of those who did present themselves at the House on such occasions. Legal hearings often had to take place against a background of constant noise and activity. Charles Yorke, Attorney-General in the first Rockingham Administration 1765-6, regarded the hearing of the cause that he was to plead at the Lords' Bar on 27 January 1766 as an opportunity for discussing the Government's resolutions on America with the First Lord of the Treasury.[164] A graphic description

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163. H.M.C. Polwarth MSS., v, 96. There are no clues as to which case is referred to in this letter.

164. Wentworth Woodhouse Muniments, R 1-560.

of an incident in the Lords while a hearing was in progress on 25 March 1720 was sent by Duncan Forbes to Lord Grange. The impression left by the scene which compelled Forbes to write deserves quotation at length: [165]

> I must tell you a tale that happened Friday last. One Monsieur Pleineouf, a foreign minister was brought into the House of Lords whilst a cause was a trying, to satisfy his curiosity. Lord Sunderland made up to him and asked how he liked the place? "Pray," says Pleineouf, "what are these gentlemen with gowns and bands at the Bar?" "Why," says my Lord, "they are lawyers." "And what are they a doing?" My Lord answered, they were arguing a cause. "Pray, my Lord, where are the judges?" "Why," says my Lord, "we, the peers, are the judges!" "Hola! mon Dieu," cries the Frenchman, "You, the judges! And is [there] not one lord in the House [that] minds the least morsel of the cause? You are all a talking to one another or to me!" "It's no matter for that," answers the peer, "there are three or four lords in the House who understand the laws very well and give attention; and the House always gives in to their opinion." "Very well," says Pleineouf, "then you, the rest of the lords, take it upon your conscience and honour, not that the cause is just or unjust, but that the lords who listen are good lawyers and just judges. But pray, my Lord, do these lawyer lords never differ in opinion? How does the House govern itself in a law of that kind?"

The question was never answered because Lord Sunderland was 'luckily

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165. Mar and Kellie MSS., S.R.O., GD 124/15/1197/33; L.J., xxi, 280.

interrupted by somebody who had a word for his private ear', [166] and the conversation came to a premature conclusion. However, much can be gleaned from the account. It shows that little heed was paid to the Standing Order made five years earlier demanding that peers remain seated during the hearing of causes; otherwise the Speaker was to adjourn the proceedings. [167] Moreover, it indicates how much the transaction of the judicial business of the House depended on the contribution of the law lords, a role here acknowledged by a fellow peer. With lawyers of such calibre as Lord Camden and Lord Mansfield sitting in the House from mid-century onwards, this tendency undoubtedly strengthened and led ultimately to the separation of the legislative and judicial functions of the House of Lords, the latter being reserved for the cognizance of the law lords only.

This process, however, was only slowly gathering force in the eighteenth century, a period when vested interests could still turn the tide against the weight of legal opinion. In May 1732, the judgement of the Court of King's Bench against the Bishop of Ely was reversed by 28 votes to 16, the bench of bishops contributing fourteen to the majority. [168] This was in spite of the fact that the judges were in favour of affirming the original decision but, by a careful management of the proceedings, their opinion was never sought. [169] Fifty years later, when the bishops again carried the day against the lawyers in the case of Bishop of London v Ffytche,

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166. S.R.O., GD 124/15/1197/33.
167. Standing Order No.64 (28 June 1715).
168. L.J., xxiv, 116 (8 May 1732).
169. H.M.C. Portland MSS., v, 42.

the affair was considered to be highly irregular and outrageous, but still possible nonetheless.[170]

Contemporaries, however, had no great love for lawyers, regarding them as loquacious wordmongers, fond of their own eloquence.[171] In the words of Andrew Stuart, counsel for the Hamilton claimant in the Douglas v Hamilton inheritance case of February 1769, the talent of the law lords 'for public speaking dazzles and bamboozles others'.[172] Lord Fortescue, speaking in the debate on the Cricklade Disfranchising Bill on 3 May 1782, complained of the 'profusion of lawyers'[173] in the House, and that 'particularly for the last two years, he had beheld their House, instead of being a House of lords, become a House of law, tending to mere quibbles and legal distinctions, which were fitter for the court of a Cornish Justice, where attorneys were admitted to plead for want of counsel'.[174]

The lawyers shared with the bishops the contempt of the society of their day, which Lord Shelburne clearly expressed in describing to the Earl of Chatham the public amusement provided by 'a very solemn trial in the House of Lords upon literary property'.[175]

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170. For an account of the debate, see Debrett, Parl.Register (2nd.ser.), xi, 196-210.

171. H.M.C. Stuart Papers, iv, 330.

172. Caldwell Papers, ii(2), 151-2. Stuart's comment may well ring with a touch of sarcasm, for in the debate on the appeal, which the Hamilton cause lost, Stuart himself became the subject of a vicious attack by Lords Camden and Mansfield. Namier and Brooke, House of Commons, iii, 496.

173. Debrett, Parl.Register (2nd.ser.), viii, 283.

174. The Public Advertiser, Saturday 4 May 1782.

175. Chatham Corr., iv, 327; L.J., xxxiv, 32.

> Lord Mansfield...showed himself the merest Captain Bobadil that, I suppose, ever existed in real life. I ought, instead of being a bad writer, to be a good painter, to convey to your Lordship the ridicule of the scene. You can, perhaps, imagine to yourself the Bishop of Carlisle, an old metaphysical head of a college, reading a paper, not a speech, out of an old sermon book, with very bad sight, leaning on the Table, Lord Mansfield sitting at it, with eyes of fixed melancholy looking at him, knowing that the bishop's were the only eyes in the House who could not meet his; the judges behind him full of rage at being drawn into so absurd an opinion, and abandoned in it by their chief; the bishops waking, as your Lordship knows they do, just before the vote, and staring on finding something the matter; while Lord Townshend was close to the Bar, getting Mr.Dunning to put up his glass to look at the head of criminal justice.

Not all appeal hearings were as somnolent as this; some could give rise to lengthy and heated debate, even if confined mainly, but not entirely, to the law peers.[176]

The ultimate means of determination in a legal case, as for all the other categories of business brought before the Lords, was by a division of the House; but in judicial cases a few procedural variations were involved. Firstly, the question on both appeals and writs of error were to be put for reversing and not for affirming the decree;[177] secondly, no proxies were to be used in judicial decisions.[178] The first of these anomalies was of the utmost

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176. B.L.Add.MS.35399, ff.282-3.
177. Standing Order No.56 (7 December 1691).
178. Standing Order No.83 (15 March 1698); B.L.Add.MS.35878, f.234.

significance on a tied vote: hence, Robert Alexander lost his appeal against James Montgomery and Co. simply because of the usage of Parliament which declared an equal vote in favour of the negative. Thus, if the question had been put as was customary for all other types of business in the Lords, that is, to affirm the decree, the question would still have been negatived on a 4-4 vote, but Alexander would thereby have achieved the reversal he sought.[179]

Of the 800 divisions in the Upper House between 1714 and 1784, only 61 of these were on legal cases. Moreover, thirteen of them occurred on one case, that of the Bishop of Ely v Bentley, 1732-3, regarding the right to visitorial power over Trinity College, Cambridge, and all but five of the 61 took place in or before 1735. The five exceptions were: Tucker v the King (1 December 1742); Alexander v Montgomery and Co. (19 February 1773); Salter v Hite (31 January 1775); Horne v the King (11 May 1778); Bishop of London v Ffytche (30 May 1783). The rarity of these occurrences points to an end of divisions along party lines on legal cases. Only in one of these instances were the judges not unanimous in their advice to the House on points of law: that was the case of 1783 where the Lords decided by one vote (19 to 18) to reverse the judgement of the Court of King's Bench. The victory secured by the block vote of the 13 bishops present on 30 May 1783 in support of their colleague, was regarded as such an abnormality as to prove the exceptional circumstances of the case.[180] The statistical evidence, therefore,

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179. L.J., xxxiii, 519 (19 February 1773).
180. Ibid., xxxvi, 686-7.

supports the reputation of fairness that contemporaries attributed to the legal proceedings of the Lords. Despite the illogicality of the lay peers' right to participate in the judicial work of the House, which could submit the result of causes to the influence of personal friendships and hatreds, family alliances, and private commitments, it does appear that by mid-century it was customary to follow the opinion of the law lords. Nevertheless, the Lords themselves placed an inestimable value on their rights of jurisdiction, and had perfect confidence in their ability to minister justice. Lord North and Grey expressed the sentiments of his fellow peers also when he affirmed in 1717 that 'the greatest prerogative of the Peers, was to be the supreme court of judicature; and as they were the dernier ressort of justice, so he doubted not, but they would ever make justice the rule and standard of their proceedings'.[181]

Long before the eighteenth century the appellate jurisdiction of the House of Lords was all that remained of its authority within the civil law, its original jurisdiction having fallen into abeyance since the fourteenth and fifteenth centuries. Similarly, since the seventeenth century the Lords had finally lost all cognizance over criminal charges brought by the Crown against 'great offenders', and by private subjects against one another.[182] There remained, however, its unique jurisdiction over the criminal proceedings of impeachment and trial by peers.

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181. Lord North and Grey was speaking in the debate of 27 May 1717 to appoint a date for the trial of the Earl of Oxford. Torbuck, Debates, vi, 479.

182. Holdsworth, History of English Law (7th edition), i, 365,378.

V

THE BUSINESS OF THE HOUSE : IMPEACHMENT AND TRIAL OF PEERS

Impeachment involved the exercise of the highest judicial authority of Parliament, and originally was reserved for high crimes and misdemeanours that lay beyond the prosecution of the common law. The first recorded instance occurred in 1376; the last was that of Lord Melville in 1806. Conviction on an impeachment carried the severest penalties, such as exorbitant fines, life imprisonment, or, if the charge was treason, not only would the accused suffer the death penalty but also the legal consequences of being attainted; which meant the confiscation of his property, the loss of civil liberties, and the corruption of blood so that he could neither inherit nor transmit by descent.

These penalties could also be imposed by the alternative method of an Act of Attainder, which would be preferred if immediate action was necessary, or if the indicted person had fled the country making it impossible to bring a legal action against him. Acts of Attainder for treason were passed against Viscount Bolingbroke and the Duke of Ormonde in 1715, against the Earl of Mar and other Scottish rebels in 1716, and against the Earl of Kellie and others involved in the 1745 rebellion, after they had previously failed to surrender themselves to justice (and probably to face impeachment proceedings) by a date appointed by Parliament.[1] If there was insufficient evidence to meet the exaction and precision of a law court, Parliament could pass a Bill of Pains and Penalties against an offender. This was the procedure

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1. L.J., xx, 176(1715); xx, 294(1716); xxvi, 589-90(1746).

adopted against Dr.Francis Atterbury, Bishop of Rochester, and his fellow conspirators involved in the Jacobite plot of 1722.[2] Twenty years later, an impeachment was considered 'too solemn and too public to be attempted without proof of crimes' against Sir Robert Walpole after his fall from office, but a Bill of Pains and Penalties was being mooted, though his family and friends comforted themselves with the thought that though his enemies 'may if they will, pass it through the Commons, [they] will scarce get the assent of the King and Lords'.[3]

Bills of Attainder and of Pains and Penalties followed the same process as all other legislation in Parliament and, as such, were susceptible to the threat of a prorogation. The responsibility for their passage through Parliament was shared equally between the Commons and the Lords. The process of impeachment, therefore, offered important advantages, primarily as a legal procedure, but consequently to the authority of the House of Lords. The first advantage rested on the rule that an impeachment did not lapse with the close of a session,[4] nor with the dissolution of a Parliament.[5]

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2. Ibid., xxii, 141-219(1723).
3. Walpole, (Yale) Correspondence, xvii, 330.
4. This was confirmed by the House of Lords by a vote of 87 to 45 on 25 May 1717, before reviving the impeachment of the Earl of Oxford. L.J., xx, 466,472-5.
5. The Lords' initial resolution that an impeachment continued despite a dissolution was made on 19 March 1679; but the decision was reversed and annulled on 22 May 1685 (see Lords Committee's report on precedents, 1791, ibid., xxxix, 133). The issue was raised again during the impeachment of Warren Hastings. It was debated on three days in the House of Commons in December 1790, and in the House of Lords on 16 May 1791, but was settled when the Commons decided that Hastings' trial did not end with the dissolution of 1790; ibid., xxxix, 190-1; C.J., xlvi, 126,133, 136 (17,22,23 December 1790).

The second advantage to be accrued from an impeachment was the importance it gave to the role of the House of Lords, for while the Commons acted as prosecutors in the case, the House of Lords acted as both the court of justice and the jury. [6]

For centuries, the procedure of impeachment had been used to indict unpopular or incompetent ministers of the Crown, and other political offenders, on criminal charges. This political use of the procedure fell into abeyance early in the Hanoverian period as Parliamentary oppositions came to adopt the more modern practices of votes of censure and votes of no confidence as a means of rebuking government ministers. Thereafter, impeachment was invoked against rebels, traitors, and misappropriators of public funds. Between 1714 and 1784 there were thirteen cases of impeachments by the House of Commons, all of peers, and of whom ten were brought to trial. [7]

In February 1716 the Earl of Derwentwater, Lord Widdrington, the Earls of Nithsdale and Carnwath, Viscount Kenmure, and Lord Nairne, were accused of treason during the Jacobite rebellion of 1715. The six pleaded guilty and were sentenced on 9 February 1716 to be hanged, drawn, and quartered. [8] A seventh rebel peer, the

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6. The fact that these trials took place before the Lords, meant that the conventions and rules of the Upper House were observed at all times.

7. The other three were Viscount Bolingbroke, the Duke of Ormonde (see Supra, p.163) and the Earl of Strafford (infra, n.21).

8. All were consequently attainted and their honours forfeited. Derwentwater and Kenmure were beheaded on Tower Hill, 24 February 1716. Nithsdale escaped from the Tower and died in Rome 1744. Widdrington, Carnwath, and Nairne were reprieved, and pardoned by the Act of Grace 1717 (L.J., xx, 557,562). For the proceedings, see L.J., xx, 252-5,264-6,267,272,284-8; State Trials, xv, 762-806; Parl.Hist., vii, 238-44,265-70,272-5,281-6.

Earl of Winton, decided to defend his case, but was sentenced to the same fate on 19 March 1716.[9] The articles of impeachment against Robert Harley, Earl of Oxford and Mortimer, were presented to the House of Lords on 9 July 1715; his trial, however, did not take place until June-July 1717 when he was acquitted following the failure of the Commons to prove their charges against him.[10] In May 1725, Thomas Parker, Earl of Macclesfield, was impeached of high crimes and misdemeanours for corrupt practices during his tenure of the Chancellorship. After a trial of twelve days, he was found guilty by his peers, fined £30,000, and committed to the Tower of London until the fine was paid; but two motions to incapacitate him from holding office or from sitting again in Parliament were rejected.[11] Twenty-one years later, Simon Lord Lovat was found guilty of treason and condemned to death on 19 March 1747 for his part in the rebellion of 1747.[12]

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9. Winton's honours, too, were forfeited. He was reprieved from execution several times before escaping from the Tower on 4 August 1716. He died in Rome, 1749. See L.J., xx, 252-5,266,310-12, 313,315-8; State Trials, xv, 806-898; Parl.Hist., vii, 238-44, 279-81; H.M.C. Stuart Papers, ii, 42.

10. A Bill of Attainder against Oxford was dropped in the House of Commons because it found no seconder. The Earl was forbidden the royal court for the rest of his life, but he continued to sit in the House of Lords. He died in 1724. L.J., xx, 99-111, 199-222, 233,511-2,524-6; State Trials, xv, 1046-1195; Parl.Hist., vii, 74-106,157-211,213,480-6,494-5; H.M.C. Bath MSS., i, 249. See also infra., pp.178-9.

11. For the proceedings against Macclesfield, see L.J., xxii, 417, 459-67,487-94,519,534-5,536-7,537-8,539-40,541-6,547-8,549-50, 554,555,556-9,559-60; State Trials, xvi, 767-1402; H.M.C. Portland MSS., vi, 1-5,6-7,8.

12. Lovat was beheaded on Tower Hill, 9 April 1747. L.J., xxvii , 14, 15-17,21,23,61-3,65,67,69-70,72,75-6,78-81; State Trials, xviii, 529-58; Harrowby MSS., document 21 (part III A), 9,18,19 March 1747; B.L.Add.MS.35387, f.23; 35 363, f.150; Harris, Hardwicke, ii, 275-9,280-309.

The first step in the impeachment proceedings had to be taken by the House of Commons. A member, in his place, rose to accuse a named person of high treason or of high crimes and misdemeanours, and moved that the accused be impeached. On 9 January 1716, a distinction was made in the declaration of impeachment between the seven peers accused of treason. The Earl of Derwentwater and Lord Widdrington, being of the English peerage, were described as 'great peers of this House [of Lords]', while the five Scottish peers were each referred to as 'a peer of this realm'.[13] If the Lower House agreed to the motion, the member was ordered to go to the House of Lords and, at their Bar, to impeach the accused in the name of the House of Commons and 'of all the Commons of Great Britain', and inform them 'That the House of Commons would in due time exhibit particular articles against him, and make good the same'.[14] Alternatively, the Commons could decide to delay making the formal charge at the Bar of the Lords until the articles of impeachment, drafted by a Committee of Secrecy, were ready. News of the appointment of such a Committee was sufficient of a stigma to lose the accused many of his so-called friends. According to one report, when Oxford attended the House of Lords on 11 June 1715 the morning after the instigation of impeachment proceedings against him in the House of Commons, he 'at first appeared pretty serene and unconcerned. But finding that most members avoided sitting near him and that even the Earl Poulett was shy of exchanging a few words with him, he was

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13. L.J., xx, 252.
14. E.g., ibid., xxii, 417(1725).

dashed out of countenance, and retired out of the House'.[15]

The articles had to be presented to the Lower House by a member of the Committee of Secrecy, who read them once from his place before delivering them to the clerk at the Table, who read them again. When the articles had been read three times, approved, and engrossed, the original accuser,accompanied by several others, was ordered to deliver them to the Lords with a clause reserving for the Commons the right to exhibit further articles if necessary, and to make a reply to the accused's answer.[16]

An impeached person came within the custodial jurisdiction of the House of Lords. If a commoner, he would be arrested by the Serjeant-at-Arms on duty at the Commons, but then delivered by him to the Gentleman Usher of the Black Rod in whose custody he remained unless released on bail by the Lords.[17] If the accused was a peer and a member of the Upper House, it was for the Commons to request that he be 'sequestered from Parliament' and taken into custody.[18] There was usually a stay in proceedings while the accused prepared his written answer to the charges against him, every article of which had to be replied to in turn. If the accused was a member of the House of Lords, he would be permitted to make a speech in which he usually requested a copy of the articles, the aid of a counsel, and time to prepare his answer,[19] these being rights that would be

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15. Torbuck, Debates, vi, 339. Oxford's name does not appear in the Lords' presence list for 11 June, but he was present on the next sitting day, which was the fourteenth. L.J., xx, 72,73.
16. E.g., ibid., xx, 149-53 (Bolingbroke, 1715); Parl.Hist., vii, 66-74 (Oxford, 1715).
17. E.g., L.J., xxxvii, 724(1787).
18. E.G., ibid., xx, 111,112,113,115 (Oxford, 1715).
19. E.g., ibid., xx, 197 (Strafford, 1715); xxii, 459(1725).

accorded the accused in all cases.[20] The Commons would be notified of all the steps taken in the enforcement of the impeachment process. When the answer had been received and examined by the clerk of the Lords, a copy was sent to the Commons who were entitled to make replications to the same if necessary.[21] Lord Lovat signed his answer to the Commons' charges as 'Simon Lord Fraser of Lovat'; the Commons' Committee of Secrecy chose to ignore this discrepancy, but announced that the accused could not take advantage of the point later in the proceedings.[22]

The right of appointing the date and place for a trial lay with the House of Lords; but in 1717 its Committee on precedents with regard to procedure at impeachments reported that this right was not to be exercised until they had previously been acquainted by the Commons of their readiness to proceed.[23] Westminster Hall was usually appointed as the venue for the trials, the one exception in the period 1714-84 being that of the Earl of Macclesfield in 1725 which was held at the Bar of the House of Lords in the White Chamber of Parliament.[24]

In the period before the trial, the Lords' Committee on precedents reported to the House its recommendations on the preparations to be made and the rules for governing the proceedings. These orders

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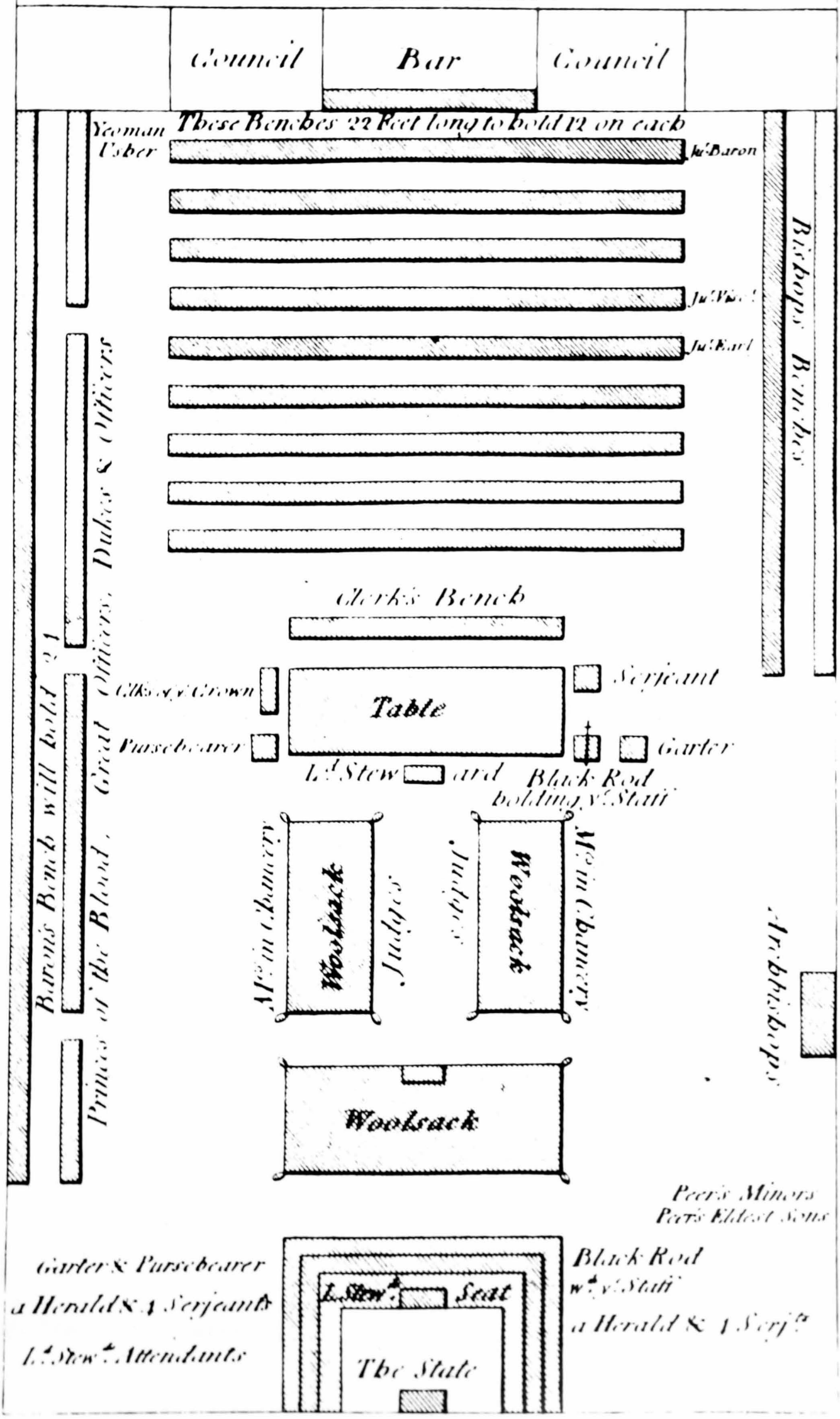
20. Standing Order No.47 (28 May 1624); e.g. L.J., xxvii, 19(1747).
21. E.g., ibid., xx, 223,225,233-4 (Oxford, 1715). The case against the Earl of Strafford was prosecuted no further than this point, though the Commons in their replication did 'aver their charges against...Strafford...to be true'; (ibid., xx, 380).
22. Harrowby MSS., document 21 (part ii), 14 January 1747.
23. E.g., L.J., xx, 476-8(1717); xxii, 494(1725).
24. See infra., p.178.

A Plan of the Inner Court in Westminster Hall, as settled by the Board of Works, and approved by His Grace the Lord Great Chamberlain.



included the procedures, both legal and ceremonial, that were to be followed; details for the erection of a court in Westminster Hall; the number of people to be admitted to the trial; the arrangements for ensuring flow of traffic and avoiding congestion in the vicinity of Westminster Palace; and the security measures to be taken.[25] The provisions authorised by this last order could, however, create considerable inconvenience to the officers of Parliament. During the duration of a trial admission to Old Palace Yard would be restricted to pass-holders only.[26] In April 1765, Thomas Tyrwhitt, Clerk of the House of Commons, complained to the Lord Great Chamberlain, the Duke of Ancaster, who had ultimate responsibility for the arrangements at state and other ceremonial occasions, that the soldiers posted in Old Palace Yard were over zealous in their duty, to the extent that they would not guarantee re-admission to anyone leaving his house in Cotton Yard, which was within the precincts of Westminster Palace, unless they too had tickets. Tyrwhitt begged that if the restriction could not be raised for all his visitors, that it should not be applied at least to himself and his servants.[27]

It was also the concern of the Committee on precedents to recommend who should preside over the court at an impeachment. If the accused was a peer charged with treason, convention demanded

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25. E.g., L.J., xx, 277-8(1716); xxvii, 34-5,41(1747).
26. For samples of the passes, see H.L.R.O., Historical Collections, 9-11.
27. H.L.R.O., Records of the Lord Great Chamberlain, Miscellaneous Records, Lord Byron's trial 1765, Tyrwhitt to Ancaster, 16 April 1765. All the officials and servants who would be on duty at the trials would be given passes, e.g. ibid., Earl Ferrers's Trial 1760, list dated 15 April 1760.

that the Crown, on the Address of the Lords, appoint a Lord High Steward to preside.[28] At other times the function would be filled by the Lord Chancellor or the acting Speaker of the House of Lords: the charge against the Earl of Macclesfield for high crimes and misdemeanours was not a capital offence, which meant that no Lord High Steward was necessary, and his trial was presided over by Sir Peter King, Lord Chief Justice of the Common Pleas, who was Speaker of the House of Lords by the King's commission.[29] The appointment, however, was a thankless one; in March 1716, Lady Cowper whose husband was Lord High Steward at the impeachment of Lord Winton, wrote in her diary that the task was a ' "grinning honour" as Sir John Falstaff calls it, for there is not one farthing's allowance for all the expense'.[30]

Well in advance of the date appointed for a trial, an order would be issued to summon peers absent from London and the House of Lords by means of circular letters from the Lord Chancellor, so as to secure as full an attendance as possible.[31] On the day of the impeachment trial both Houses would first convene in their own chambers of Parliament, and a roll call of the members carried out. In the Commons, the Serjeant-at-Arms in attendance would be sent with the Mace into Westminster Hall and the lobbies around the Lower House to summon members and clear the area of strangers. When this

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28. E.g., L.J., xx, 277(1716). The appointee was usually the Lord Chancellor as the senior law lord.

29. Ibid., xxii, 377,533.

30. Countess Cowper's Diary, p.96.

31. E.g., L.J., xx, 257(1716); 478(1717); xxii, 522(1725). Failure to comply could result in a heavy fine; see H.M.C. Portland MSS., vi, 2; also H.M.C. Polwarth MSS., v, 179. For an example of the circular letters, see the draft summons for Lovat's trial 1747, B.L.Add.MS.35886, f.217. For the procedure, see infra. pp.241-2.

was done, the House could be called over. The first to be called were the managers who had been appointed by the House to prepare the evidence and to conduct the impeachment on the part of the House. Each rose and answered to his name, bowed to the Speaker, and received the same in return, then left his seat to proceed to the places prepared for them at the Bar of the court in Westminster Hall.[32] Then the House of Commons resolved itself into a Committee of the Whole House, the Speaker left the Chair, and the others members were called over by the clerk in the order of their constituencies.[33] Since the Commons attended the impeachment as a Committee of the Whole House, the Mace was not brought into the Hall, but the Speaker did attend, wearing the gown of his office.[34] In 1725 when the Commons' managers only were officially present at Macclesfield's trial in the House of Lords, Speaker Compton did attend, but without his gown, and he had to stand in a doorway close to the box for the managers.[35] He was free to do so because no business was conducted in the House of Commons while the managers were at the trial, for the House had resolved on 5 May 1725 that its proceedings should remain adjourned, as was customary when its managers were at a conference with the House of Lords.[36]

In the Upper House, the lords met for these occasions in full ceremonial dress; the only exception was at the trial of the Earl

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32. Harrowby MSS., document 21 (part iii A), 9 March 1747.

33. For the procedure in the Lower House, see Thomas, House of Commons, pp.105-6. For examples at impeachments, see C.J., xviii, 401-2, 405(1716); xx, 512,521(1725); xxv, 314,315(1747).

34. Harrowby MSS., document 21 (part iii A), 18 March 1747; Hatsell, Precedents, iv, 48 n.

35. Ibid., p.47 n.

36. C.J., xx, 511. For the procedure at a conference, see infra, pp.529-36.

of Macclesfield, when as a result of several lords complaining of 'the great prejudice it may be to their healths, by reason of the warmth of the weather, to sit during the whole trial and examination in their robes', it was decided that this practice would, on this occasion, be observed only on the day that judgement was given.[37] The Lords' procedure began with a reading of the King's Commission appointing a Lord High Steward for the duration of the trial. While this was read by a clerk, the lords remained standing, heads uncovered.[38] Then the lords, too, were called over. Garter King at Arms approached the Table and, as the name of each peer was called in reverse order of precedence, he marked the names of those present, while the clerk noted the names of the absentees. Those absent were then called again.[39] At Macclesfield's trial, on 6 and 25 May 1725, Garter King at Arms departed slightly from this practice and began with 'the lord of the highest rank', as had been ordered by the House. The explanation for this irregularity was to ensure that the senior peers would be certain of a seat in the more confined area of the White Chamber as compared to Westminster Hall.[40]

The House of Lords then adjourned to Westminster Hall, where the public, the members of the royal family, and the House of Commons would already be gathered. They proceeded in reverse order of precedence, as directed by Garter King at Arms with the aid of his newly-composed list. The procession included the officers and attendants of the House as well as the eldest sons of peers and minor peers, so that the processional roll would read as follows,

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37. L.J., xxii, 529.
38. E.g., ibid., xx, 310(1716).
39. E.g., ibid., xx, 511(1717); xxvii, 61(1747). See also infra,pp.243-4.
40. Ibid., xxii, 534,554. See also infra, p.295.

all concerned walking in pairs unless otherwise stated: [41]

The Lord High Steward's gentlemen attendants.

The Clerks to the House of Lords.

The Clerk of the Crown in Chancery (carrying the King's commission appointing a Lord High Steward), together with the Clerk of the Crown in the King's Bench.

The Masters in Chancery.

The Judges.

The Peers' eldest sons.

Minor peers.

Two heralds.

Four Serjeants-at-Arms carrying their maces.

The Yeoman Usher of the House (alone).

The Barons in pairs, the lowest leading the way.

The Bishops.

The Viscounts, Earls, Marquesses and Dukes, in rank.

The Lord Privy Seal and Lord President.

The Archbishop of York and the Archbishop of Canterbury.

Four Serjeants-at-Arms with their maces.

The Serjeant-at-Arms attending the Great Seal, and the Purse Bearer.

Garter King at Arms, and the Gentleman Usher of the Black Rod carrying the White Staff.

The Lord Chancellor of Great Britain, walking alone, and the train of his robe being borne.

The royal princes, in reverse order of precedence, also walking in single file, and their trains being carried.

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41. This is a composite list drawn from those describing the processions at the Earl of Oxford's impeachment 1717 (Torbuck, Debates, vi, 492), Lord Byron's trial 1765 (H.L.R.O., Records of the Lord Great Chamberlain, Miscellaneous Records), and the Duchess of Kingston's trial 1776 (H.L.R.O., Parliament Office Papers 354, Precedents Book, pp.98-100).

Their route to Westminster Hall took them through the Painted Chamber, the Court of Requests, the Court of Wards, along a gallery placed between the Courts of Chancery and King's Bench, into the specially erected court in Westminster Hall.[42] Each pair, as they passed the throne, bowed , whether the King was present or not.[43]

When all had taken their appropriate places, the Lord Chancellor from the woolsack declared the House to be resumed. Serjeant-at-Arms, standing on a stool,[44] proclaimed silence 'upon pain of imprisonment', whereupon the King's commission appointing a Lord High Steward was presented by the Clerks of the Crown in Chancery and in King's Bench. The commission was carried by the former; together, they made three obeisances to the Throne of State, at regular distances apart, as they approached the woolsack from the Clerks' Table and, on their knees, delivered the commission to the Lord Chancellor who immediately handed it to the Clerk in King's Bench, to be read. Following the same procedure, the Clerks retraced their steps back to the Table. After another declaration for silence, the Lord Chancellor instructed the whole assembly to stand and the Lords to uncover their heads, while the commission was read.[45] From that moment the authority of the Lord Chancellor to preside over the Lords was suspended in favour of the Lord High Steward, who was thereafter addressed as 'His Grace'.[46] The Lord High Steward was presented with the white rod of his office by Garter King and the Gentleman Usher of the

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42. Torbuck, Debates, vi, 491.
43. Grosley, Tour, ii, 150. If the King did choose to attend, he would usually sit in the box prepared specially for him and his entourage, e.g. Torbuck, Debates, vi, 491. See also infra, p.199.
44. Grosley, Tour, ii, 151.
45. H.L.R.O., Parliament Office Papers 354, Precedents Book, pp.100-2; e.g. L.J., xx, 511(1717).
46. Campbell, Lord Chancellors, i, 17.

Black Rod, in the same manner as the Clerks had set previously. Then the Lord High Steward, with Black Rod and the Purse Bearer walking on either side of him, left the woolsack to sit in an armed chair placed on the second of the three steps leading to the throne, and gave custody of the staff to Garter King, who stood on his right, and the Chancellor's purse to its Bearer on his left. [47]

On the instructions of the Clerk of the Crown in King's Bench, the Serjeant-at-Arms called on the accused to be brought to the Bar. The prisoner would be escorted by the Lieutenant Governor of the Tower of London. In front of him walked the Gentleman Gaoler, carrying an axe with the blade turned away from the prisoner while he remained uncondemned. [48] After making the customary three reverences to the throne, the prisoner fell to his knees and remained so until told by the Lord High Steward to rise. He was also expected to show his respect to His Grace and the House of Lords by making a bow, which courtesy was returned. In accordance with the recommendations of the Committee on precedents, the articles of impeachment, the prisoner's answer, and the Commons' replication, were read to the court immediately that the accused was brought to the Bar; [49] then the Lord High Steward made a short speech promising him a fair and impartial trial and giving him advice for his own conduct during the proceedings and the presentation of his defence. [50]

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47. H.L.R.O., Parliament Office Papers 354, Precedents Book, pp.102-3; e.g., L.J., xxii, 534(1725); xxvii, 65(1747).
48. H.L.R.O., Records of the Lord Great Chamberlain, Miscellaneous Records, Lord Ferrers's Trial 1760. See also the sketches of the scene at Lord Lovat's impeachment, Yorke, Hardwicke, i, 574 (facing page). At the trial of the three rebel lords in 1746, the axe was held next to the peer lowest in rank, Lord Balmerinoch, H.M.C., Hastings MSS., iii, 60.
49. E.g., L.J., xx, 286(1716), 511(1717).
50. E.g., ibid., xxvii, 62-3(1747).

Macclesfield took no heed of these instructions but spoke contemptuously to the Commons' managers throughout the proceedings, until Arthur Onslow, M.P. for Guildford and one of the insulted managers, made the formal complaint that 'The managers cannot but observe the indecent behaviour of this Lord, and his unworthy manner of treating us. We do not think the Lord at the Bar should be directing the managers as if he sat in his place as judge. We are here advocates for all the Commons of Great Britain, to demand justice against him'.[51] If the impeached person was a peer, he would be allowed to sit on a stool provided for him. In 1725, the Earl of Macclesfield was permitted to sit within the Bar, but without his hat, and during the trial was referred to as 'the noble Earl within the Bar'.[52] If the charge was for a capital offence such as treason, the prisoner had to remain below the Bar.[53] One convention remained to be observed: the Lord High Steward, drawing their lordships' attention to the distance between the Bar and his chair near the throne, thereupon sought their permission to sit at the clerks' Table 'for the convenience of hearing'. When he had taken up his new position, he called on the managers of the House of Commons to proceed and open the case for the prosecution.[54]

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51. Campbell, Lord Chancellors, iv, 550; State Trials, xvi, 1060.
52. L.J., xxii, 534. The same privilege was given Dr.Francis Atterbury when the evidence against him on a Bill of Pains and Penalties was being heard in the House of Lords , Harrowby MSS., document 29 (part ii).
53. The same rule applied if a peer was being tried for felony. H.L.R.O., Records of the Lord Great Chamberlain, Miscellaneous Records, Earl Ferrers's Trial 1760.
54. E.g., L.J., xx, 511(1717); xxvii, 63(1747).

Many of these formalities were superfluous for the impeachment of the Earl of Macclesfield because it had been decided to hold the trial at the Bar of the House of Lords in the White Chamber of Parliament,[55] and because no Lord High Steward was appointed. Thus, on the opening day of the trial, 6 May 1725, when the lords had been called over and Macclesfield was seated within the Bar, a message was sent to the House of Commons acquainting them that the Lords were ready to proceed. The Commons' managers came alone to the Upper House; there, accommodation had been prepared for them below the Bar on the east side of the House.[56] The first proclamation for silence was followed by Sir Peter King's request, as Speaker of the Lords, for permission for the judges to cover their heads; after which the formal summons for the prosecution to come forward was made, the articles of impeachment were read, and the trial began.[57]

The managers' first duty was to prove the articles of impeachment brought against the accused; they could examine witnesses and present evidence, but they were limited to the charges contained in the articles. No sooner had the managers begun to open the charges against the Earl of Oxford on 24 June 1717 than an attempt was made to secure the Earl's release by staging a mock dispute between the two Houses.[58] The Lords, having returned to their own chamber,[59] debated a motion made by Lord Harcourt that the Commons should not be allowed to 'make good' the articles of high

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55. Ibid., xxii, 519.
56. Ibid., xxii, 522,531,534.
57. Ibid., p.534.
58. Coxe, Sir Robert Walpole, i, 192; H.M.C. Portland MSS., v, 527.
59. For this procedure, see infra., pp.182-4.

crimes and misdemeanours until judgement had been given on the charge of high treason.[60] The latter crime carried the death penalty, and if Oxford would be found guilty, it would have made the prosecution of the other charges unnecessary. The House of Lords approved the resolution, but it was totally unacceptable to the Commons when they were informed of the decision after the court had been resumed in Westminster Hall.[61]

> They [the managers] conceived it to be so much the undoubted right of the Commons, to proceed in their own method, in maintenance of the articles exhibited by them; and did apprehend, that this resolution of their Lordships might be of such fatal consequence to the rights and privileges of all the Commons of Great Britain, that they would not take upon them to proceed any further, without resorting to the House of Commons, for their direction therein.

There followed several conferences between the Houses (the Commons' requests for a free conference being repeatedly refused) to try and settle the dispute on the method of proceeding, without result.[62] Finally, on 1 July 1717, the House of Lords determined to proceed with the trial: three proclamations were made for Oxford's accusers, the House of Commons, to appear; when they failed to do so, the Lords acquitted Oxford of all the charges against him and ordered him to be discharged.[63]

The extent to which the accused would be allowed legal aid in making his defence depended on the charges brought against him.

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60. L.J., xx, 512; Timberland, History, iii, 64-5.
61. L.J., xx, 512.
62. Ibid., pp.515-7,518,519,521,523-4.
63. Ibid., pp.524-6; Timberland, History, iii, 72; N.L.W., Ottley MSS., No.2509.

All persons tried before the House of Lords in 'cases of moment' were, according to a Standing Order of 1624, to be given the assistance of a counsel:[64] hence, the Earl of Macclesfield's defence in May 1725 was conducted by the counsel assigned him by the Lords.[65] The Act of 7 and 8 William III, c.3 allowed commoners and peers alike, who were indicted of treason, the benefit of making their full defence (that is, on points of fact as well as on points of law) by counsel.[66] Lord Hardwicke, as Lord High Steward in the trial of Lords Kilmarnock, Cromarty, and Balmerinoch, reminded them of their right in his speech to the accused when they were first brought to the Bar on 28 July 1746.[67] The clauses of the Act, however, did not apply to peers impeached of treason.[68] The Lords' Committee appointed to search for precedents and to advise on the manner of proceeding at the trial of the Earl of Oxford admitted that they had difficulty in reconciling the conflicting provisions of Standing Order 47 and the Treason Act of William III's reign, but recommended that Oxford be allowed the aid of counsel only on points of law with regard to the articles accusing him of treason, but that counsel might assist him on all matters on the charges of high crimes and misdemeanours. An attempt was made by means of an amendment to omit the charge of treason altogether; but the House decided to accept the resolution in its original form.[69] Lord Lovat, too, had to suffer from this legal

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64. Standing Order No.47 (28 May 1624).
65. L.J., xxii, 532,541.
66. Statutes of the Realm, vii, 6.
67. L.J., xxvi, 622.
68. See proviso, clause xi, Statutes of the Realm, vii, 7.
69. L.J., xx, 492 (12 June 1717).

disability, but shortly after his trial Parliament passed the Act, 20 George II, c.30, which allowed persons impeached of treason to make their full defence by counsel.[70]

All the witnesses to attend at an impeachment, whether for the prosecution or for the defence, were to be summoned on the orders of the House of Lords.[71] Each witness would be sworn at the Bar, the oath being administered by the Clerk Assistant of the House of Lords; but before the examination could properly begin, it was customary that the Lord High Steward complain of the difficulty of hearing all that was said at the Bar, and therefore a clerk would be instructed to repeat all the questions put to the witness and the answers given.[72] The witness could be examined and cross-examined by counsel (on points of law only before 1747) by the accused, and by the peers themselves.[73] One observer at the murder trial of Lord Byron in April 1765 described a part of the scene:[74]

> [Byron] had by his side, for his counsel, Mr. Yorke, son of the late Lord Chancellor....The unfortunate nobleman had likewise his attorney, and a sort of crier who, with a voice resembling that of a stentor, repeated phrase by phrase all that was said by the witness and the accused...The depositions of [the] witnesses admitted, were then read. The person who read them, made a pause at each phrase: the accused

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70. Statutes at Large, vii, 32-3. The Bill, which was ordered in the House of Commons on 4 May 1747, was brought up to the Lords on 13 May, passed on 19th, and given the Royal Assent on 17 June. L.J., xxvii, 112,115,136.

71. E.g., ibid., xx, 489(1717); C.J., xx, 511(1725); L.J., xxvii, 19(1747).

72. H.L.R.O., Parliament Office Papers 354, Precedents Book, pp.105-6.

73. E.g., L.J., xxii, 536,541(1725); xxvii, 63(1747)

74. Grosley, Tour, ii, 152. For Byron's trial, see infra, p.193. For the examination of witnesses, see supra., pp.39-43.

> answered by word of mouth, asked questions, and entered into a sort of a conversation with a witness; notes were taken of all that was said by the Clerk of the Crown, as well as of the questions asked by some of the peers.

The impeached Earl of Winton in March 1716 was the first to be given the benefit of an Act of the first year of Queen Anne's reign, which allowed the witnesses called by the defendant on a charge of high treason to give evidence on oath, as those for the prosecution had always done, so that the testimony of all would be regarded with the same degree of credibility.[75] All who spoke during a trial , the Commons' managers, the accused, the counsel, and the witnesses , were to address themselves to the Lords in general, and not to the Lord High Steward as the presiding peer.[76]

If in the course of a trial a question arose that the peers as the judges wished to debate, the court had to adjourn and the Lords had to return to their own chamber of Parliament, for no debate could take place in Westminster Hall.[77] At Macclesfield's trial in 1725, the Lords' right to debate in private was ensured by ordering the managers, the counsel, the accused, and the witnesses to withdraw from the House of Lords' chamber.[78] On all these occasions the Commons could return to their own chamber in St.Stephen's Chapel, resume the House, and proceed with other business until they received

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75. L.J., xx, 309,311.
76. E.g., ibid., xx, 491,511(1717); xxvii, 34,63(1747).
77. Harrowby MSS., document 21 (part III A), 18 March 1747.
78. L.J., xxii, 530,536.

a message from the Lords that they were ready to continue with the trial; the Commons again resolved into a Committee of the Whole House before returning to Westminster Hall.[79] The evidence of the Journals of both Houses, however, suggest that the Commons did not always take advantage of this right, but preferred to remain in Westminster Hall, unless the Lords' debate promised to be a lengthy one.[80]

Any peer could acquaint their Lordships that he had a motion to make, and thus oblige the Lords to withdraw to the White Chamber.[81] To do so the Lord High Steward had first to return to his chair below the throne before declaring, with their lordships' consent, that the House was adjourned to the chamber of Parliament. They proceeded there in the same order as the procession to Westminster Hall, except that the Lord High Steward now walked behind the royal princes.[82] When His Grace had taken his place on the uppermost woolsack and declared the House resumed, the Lords debated the motion until they reached a decision. The House was again adjourned and ordered to reconvene in Westminster Hall, the same orderly procession being observed once more. If the adjournment from the Hall to the chamber of Parliament was only a preliminary to suspending the trial for that day, the motion to adjourn would be made by the Lord President or, in his absence, the lord next in rank.[83] Certain formalities remained before the lords could

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79. E.g., L.J., xx, 316; C.J., xviii, 405(1716); L.J., xx, 512; C.J., xviii, 604(1717).
80. E.g., cf. L.J., xx, 312,313,315 with C.J., xviii, 402,406(1716); L.J., xxvii, 65,76 with C.J., xxv, 315,320.
81. Torbuck, Debates, vi, 502.
82. H.L.R.O., Parliament Office Papers 354, Precedents Book, p.107; e.g., L.J., xx, 311(1716), 512(1717), xxvii, 65(1747).
83. H.L.R.O., Parliament Office Papers 354, Precedents Book, p.106.

depart for the day: the date and time for continuing with the trial had to be appointed; the prisoner had to be remanded in custody and his gaoler ordered to bring him to the Bar in Westminster Hall at the next sitting of the court; and a message acquainting the Commons of these orders had to be sent to the Lower House.[84]

When the accused had concluded his defence, the Commons' managers had the right to reply,[85] after which the defendant could make no further addition to his case.[86] The Lords then adjourned to the Parliament Chamber so as to provide an opportunity for debating the issue and to allow the spiritual peers to ask leave of the House to be absent from the judgement, in accordance with the canons of the church, which prohibited them from voting in cases involving the death penalty. The request was made by the senior ecclesiast present, who simultaneously entered a protestation on behalf of the bench 'saving to themselves and their successors all such rights in judicature as they have by law, and of right ought to have'.[87] Neither was there any obligation on the temporal peers to vote; individuals could withdraw and avoid giving an opinion if they so wished.[88]

The court once more reconvened in Westminster Hall where the Lords proceeded to give their vote on the case. The accused was not allowed to be present at this stage.[89] The Lord High Steward,

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84. E.g., L.J., xx, 312(1716); xxii, 537(1725); xxvii, 70(1747).
85. May, Parliamentary Treatise, pp.377-8.
86. L.J., xxvii, 75-6.
87. E.g., ibid., xx, 285(1716); xxvii, 76(1747).
88. Fortescue, Corr. of George III, iii, 352.
89. Harrowby MSS., document 21 (part iii A), 18 March 1747.

standing behind his chair on the steps of the throne, his head bared, called on each peer by name, commencing with the most junior baron, to declare whether the accused was guilty or not guilty of the charge. Each lord in turn rose to his feet, laid his right hand on his breast, and declared his opinion on his honour. Finally, in the same manner, the Lord High Steward gave his own vote.[90] At Macclesfield's trial in 1725, the Lords had previously resolved, as they had done at Dr.Sacheverell's trial in 1710, that the Commons had 'made good their charges' against him. In both cases the impeachment had been for high crimes and misdemeanours and not for a capital offence.[91] On 1 July 1717, the question put to the Lords was whether to acquit the Earl of Oxford of the impeachment against him: the same procedure was followed, except that each peer gave his opinion 'Content' or 'Not content' as was customary for any other question before the House.[92]

The accused would then be brought to the Bar and acquainted with the result. If the verdict was not guilty, the impeachment was dismissed and the prisoner was discharged;[93] but if guilty, it was for the Commons to demand the judgement of the Lords against him. The Lower House claimed this as a privilege, though it was not acknowledged by the Lords.[94] When judgement was to be

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90. E.g., L.J., xx, 313(1716); xxii, 555,556(1725); xxvii, 76(1747).
91. Ibid., xix, 109-10,111-12(1710); xxii, 554(1725).
92. L.J., xx, 525. For the various procedures of taking decisions in the House of Lords, see infra., pp.427-31.
93. E.g., L.J., xx, 526 (1717).
94. C.J., xviii, 405; xxv, 320.

pronounced the Lords sent a message to the Commons that they were ready to proceed further with the impeachment. In Westminster Hall the prisoner at the Bar would be given an opportunity to plead in arrest of judgement before the Lords once more adjourned to the chamber of Parliament where the Commons came to make their claim.[95] Sir Dudley Ryder described the occasion on 19 March 1747 as follows: 'The Speaker with the Commons came in and read out of a written paper words of demand of judgement, and immediately returned. The Lords at the same time took no notice of him'.[96] The Speaker's demand was made 'in the name of the knights, citizens and burgesses, in Parliament assembled, and of all the Commons of Great Britain' who had brought the impeachment,[97] but the judgement and sentence pronounced by the Lord High Steward was that of 'the law' and of the House of Lords as the high court of Parliament.[98]

This concluded the impeachment process. When the prisoner had been taken from the Bar in Westminster Hall, the Lord High Steward rose from his chair below the throne, uncovered his head, and declared his commission dissolved, as a sign of which he broke the staff of his office. The Lord Chancellor returned to his place on the woolsacks before adjourning the House, and in the procession to the Parliament Chamber he once more walked before the royal princes.[99] All that remained was for the Lords to thank the Lord High Steward for his address in giving judgement and to order that the speech

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95. E.g., L.J., xx, 315-16(1716); xxii, 559-60(1725); xxvii, 78(1747).
96. Harrowby MSS., document 21 (part iii A), 19 March 1747.
97. E.g., L.J., xxii, 560(1725).
98. E.g., ibid., xxvii, 80(1747).
99. E.g., ibid., xx, 526(1717); xxvii, 81(1747).

and the trial proceedings be printed and published, and the speech to be entered in the journal of the House.

Within the period 1714-84, six other members of the peerage were also brought to trial before the House of Lords. These were not cases of impeachment by the House of Commons; they were instances of offences under the common law being tried before the Upper House of Parliament. On 14 January 1690, the Lords had resolved 'That it is the ancient right of the peers of England to be tried only in full Parliament for any capital offence'.[100] This meant that the formalities to be observed were the same as those at an impeachment, with a few distinctions. The president of the court at the trial of a peer, whatever his crime, was the Lord High Steward.[101] This appointment had to be given to a peer of the realm, and when neither the Earl of Hardwicke nor Lord Mansfield,[102] the two law lords then sitting in Parliament, would agree to serve at the trial of Earl Ferrers for murder in 1760, Sir Robert Henley, Lord Keeper of the Great Seal and Speaker of the House of Lords since June 1757, was raised to the peerage so as to qualify for the post.[103] The documents to be read to the court were the original indictment against the accused and the writ of certiorari issued to bring the case from one of the lower law courts to the

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100. Standing Order No.52 (14 January 1690).

101. E.g., L.J., xxvi, 599,600(1746).

102. Hardwicke was an ex-Lord Chancellor, and Mansfield was Lord Chief Justice of the King's Bench.

103. Campbell, Lord Chancellors, v, 194; L.J., xxix, 614,627,646 (1760). Henley was created Baron Henley of Grange on 27 March 1760. He remained Lord Keeper until January 1761 when he was appointed Lord Chancellor; he retired from the woolsack in July 1766. Henley was further created Earl of Northington on 19 May 1764.

cognizance of the House of Lords.[104] These were to be read before the prisoner was brought to the Bar, and not immediately after as was the case with articles of impeachment.[105] Following the customary show of respect to the court by the prisoner when he had been told to rise from his knees, the Lord High Steward made his speech, after which the accused was arraigned on the indictment by the Clerk of the Crown in the King's Bench. His plea of guilty or not guilty was entered and, on being asked 'By whom he would be tried?', the accused answered, 'By God and his peers'.[106] When the Serjeant-at-Arms had made a proclamation for the witnesses of the Crown against the accused to come forth and be heard, and the Lord High Steward had taken his seat at the Table, the scene was set for the trial to begin. The proceedings thereafter followed the same format as at an impeachment, with the major distinction that the prosecution case would be put by the law officers of the Crown, the Commons having no part to play in this legal process.[107]

The crimes for which a peer could be tried before his peers were limited to treason, felony, misprision of treason, and misprision of felony. In July 1746 the Earls of Kilmarnock and Cromarty and Lord Balmerinoch were tried for high treason for their part in the Jacobite rebellion of 1745. The two earls pleaded guilty; Balmerinoch, however, decided to make an impromptu defence, but was found guilty by his peers, and all three were sentenced to be

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104. E.g., L.J., xxxi, 38,49(1765); xxxiv, 497(1775).

105. H.L.R.O., Parliament Office Papers 354, Precedents Book, pp.102-3; e.g. L.J., xxvi, 618-22(1746); xxix, 646-7(1760).

106. H.L.R.O., Parliament Office Papers 354, Precedents Book, pp.103-4; e.g., L.J., xxxi, 129(1765); xxxiv, 649(1776).

107. E.g., ibid., xxvi, 623(1746); xxix, 649(1760).

hanged, drawn and quartered.[108] Their trial was governed by the terms of the Act of 7 and 8 William III, c.3,[109] the special proviso of which was that its clauses did not apply to impeachments. The Act stipulated, 'That upon the trial of any peer or peeress either for treason or misprision, all the peers who have a right to sit and vote in Parliament shall be duly summoned twenty days at least before every such trial'.[110] Every peer so summoned and attending on the day could then vote, providing he had taken the oaths of allegiance and supremacy specifically in order to qualify to act as a judge at the trial.[111] Among those who did so in 1746 were the bishops, despite the fact that the Act of 1696 could be interpreted so as to exclude them from doing so, the bishops being, according to a Standing Order, 'only lords of Parliament, but not peers, for they are not of trial by nobility'.[112] In practice, however, the bishops were always summoned to the trial of a peer before Parliament, though they exercised the same right to withdraw before judgement was pronounced, as they did at impeachments.[113] But the spiritual lords had never been summoned to the

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108. The trial was held on 28,30 July and 1 August 1746, L.J., xxvi, 615-24,625-6,627-30. For accounts of the trial, see H.M.C. Hastings MSS., iii, 58-60; Walpole, (Yale) Correspondence, xix, 280-9; State Trials, xviii, 442-528; Harris, Hardwicke, ii, 257-63. Kilmarnock and Balmerinoch were executed at Tower Hill on 18 August 1746. Cromarty was given a conditional pardon in 1749.

109. See supra., p. 180.

110. Statutes of the Realm, vii, 7; e.g., L.J., xxvi, 598-9. Attendance at the other trials of peers during the period was secured by the usual procedures of the House as enforced at impeachments, supra, p.171.

111. E.g., L.J., xxvi, 609,610,612-13,616.

112. Standing Order No.44 (14 December 1621).

113. E.g., L.J., xxvi, 623(1746); xxix, 651(1760); xxxiv, 666-7(1776).

court of the Lord High Steward which, until it fell into abeyance in the late seventeenth century, had had jurisdiction to try peers if Parliament was not in session.[114]

Lords Kilmarnock and Cromarty were removed from the Bar in Westminster Hall immediately upon pleading guilty on 28 July 1746, leaving Balmerinoch to stand trial alone.[115] Throughout the proceedings he presented to the court an air of indifference about his fate. Horace Walpole described the scene thus: 'At the Bar, he plays with his fingers upon the axe while he talks to the Gentleman Gaoler; and one day somebody coming up to listen, he took the blade and held it like a fan between their faces. During the trial, a little boy was near him, but not tall enough to see; he made room for the child and placed him near himself'.[116] Those who gave witness against him he 'afterwards...shook cordially by the hand'.[117] He was found guilty, however, by the unanimous vote of the Lords. The Treason Act of 1696 also declared a majority verdict was sufficient to condemn or acquit a peer of treason, whereas a commoner had to be sentenced by the unanimous vote of a jury of twelve freeholders.[118] All but three of the 147 peers present on 28 July voted on the charge:[119]

> When the peers were going to vote, Lord Foley withdrew, as too well a wisher; Lord Moray, as nephew of Lord Balmerinoch - and Lord Stair - as I believe, uncle to his great-grandfather. Lord Windsor, very affectedly,

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114. May, Parliamentary Treatise, p.382.
115. L.J., xxvi, 613; H.M.C. Hastings MSS., iii, 58.
116. Walpole, (Yale) Correspondence, xix, 282.
117. Ibid., p.283.
118. Statutes of the Realm, vii, 7.
119. Walpole, (Yale) Correspondence, xix, 284-5.

> said, "I am sorry I must say, Guilty upon my honour." Lord Stamford would not answer to the name of Henry, having been christened, Harry - what a great way of thinking on such an occasion! ... Lord Balmerinoch said, that one of his reasons for pleading not guilty was, that so many ladies might not be disappointed of their show.

On 17 January 1690, three days after bestowing on the peerage the privilege of a trial before Parliament on capital offences, the Lords limited the order so as not to apply 'to any appeal of murder or other felony'.[120] This resolution was never rescinded; it is only to be deduced that the Lords chose to ignore the contradiction in their own orders, for they never surrendered the right to try a peer accused of murder: for example, the case of the Earl of Warwick and Holland and Lord Mohun; the one convicted and the other acquitted of the manslaughter of Richard Coote in 1699.[121] On 17 March 1760, the House of Lords ordered a writ of certiorari under the Great Seal to be issued so as to bring the case of Laurence, Earl Ferrers, indicted for murder by the grand jury of Leicestershire, within its own jurisdiction.[122] Ferrers was accused of the murder of his steward, John Johnson, and was brought to trial before the House of Lords in Westminster Hall on 16 to 18 April 1760.[123] His defence rested solely on his alleged

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120. Standing Order No.53 (17 January 1690).

121. State Trials, xiii, 939-1034,1034-60.

122. L.J., xxix, 607.

123. For accounts of the proceedings, see L.J., xxix, 645-9,650-2, 653; H.L.R.O., Records of the Lord Great Chamberlain, Miscellaneous Records, Lord Ferrers's Trial 1760; Walpole (Yale) Correspondence, ix, 272-3; xxi, 388-9,394-404; State Trials, xix, 885-980.

insanity,[124] which his fellow peers dismissed and unanimously found him guilty as charged. After consulting the judges as to whether a peer, too, could be sentenced under the recent Murder Act of 25 George II, c.37,[125] Ferrers was condemned to be 'hanged by the neck till you are dead, and your body be dissected and anatomized'.[126] He was hanged with a rope made of silk, as was the privilege of peers, at Tyburn gallows on 5 May 1760.[127] The foreigners visiting London at the time were, according to Walpole, 'struck with the awfulness of the proceeding — it is new to their ideas, to see such deliberate justice, and such dignity of nobility, mixed with no respect for birth in a catastrophe, and still more humiliated by anatomizing the criminal'.[128]

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124. The House of Lords had caused a writ of habeas corpus to be issued under the Great Seal so as to transfer Ferrers from Leicester gaol to the Tower of London. This extreme measure had been found necessary because Ferrers had resisted all previous attempts by habeas corpus to move him. Three years earlier he had adopted the same attitude of non-compliance with legal procedures when writs of habeas corpus were applied for by his wife's family as the only means of removing her from her husband's home and his threats to murder any person who took up her cause. In 1758, Mary, Countess Ferrers, obtained an Act of Parliament granting her a legal separation from her husband. (L.J., xxix, 249,271-5,381). Ferrers's intransigence in 1757 had resulted in the Standing Order that the privilege of the peerage from arrest did not extend to resisting a writ of habeas corpus (Standing Order No.125, 8 June 1757; L.J., xxix, 36,179,180).

125. Statutes at Large, vii, 440-1.

126. L.J., xxix, 653.

127. H.L.R.O., Records of the Lord Great Chamberlain, Miscellaneous Records, Lord Ferrers's Trial 1760. Horace Walpole, in a lengthy and detailed account of the execution, makes no reference to this point, Walpole (Yale) Correspondence, xxi, 394-404.

128. Ibid., xxi, 389.

Five years later, in April 1765, another peer was tried by the Lords for murder: this was Lord Byron of Rochdale who had killed his cousin, William Chaworth, in a duel on 26 January 1765. He was found not guilty of murder, but convicted of manslaughter by 119 peers, while four acquitted him of the charge completely. These were Lords Beaulieu, Falmouth, Le Despenser, and Orford. [129] On this lesser offence, and since it was his first conviction, Byron was allowed to claim the benefit of the Act of 1 Edward VI, c.12, which extended to peers the privilege of the clergy to freedom from corporal punishment. [130] Byron, therefore, was set free and, a few days later, was seen in the House of Lords during the debate on the King's Speech recommending a Regency Bill. [131]

In April 1776 a case of great social scandal was brought before the House of Lords which, for a short while, diverted the public's attention from the war with America. This was the trial of the Dowager Duchess of Kingston for bigamy. [132] In February 1769 the consistory court of the Bishop of London heard proceedings on the case of jactitation of marriage brought by the Duchess against August John Hervey (who became Earl of Bristol on the death of his brother in 1775). The court's judgement was that the 'honourable Elizabeth Chudleigh[133]...was and now is a spinster, and free from all

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129. For the trial proceedings on 16 and 17 April 1765, see L.J., xxxi, 126-9,130-5; Walpole, (Yale) Correspondence, xxxviii, 534-5; Grosley, Tour, ii, 148-55; State Trials, xix, 1177-1236.

130. Statutes of the Realm, iv(1), 18-21. The Act did not apply to murder.

131. Grosley, Tour, ii, 155; L.J., xxxi, 151.

132. For an account, see ibid., xxxiv, 645-52,654-8,659-70; Walpole, (Yale) Correspondence, xxviii, 260-6; State Trials, xx,355-652.

133. The Duchess's maiden name.

matrimonial contracts and espousals...more especially with the said right honourable Augustus John Hervey'.[134] A month later, she married Evelyn Pierrepont, Duke of Kingston. On his death in 1773, his will, in which he bequeathed all to his widow during her lifetime, was disputed by his nephew and heir at law, Evelyn Philip Meadows.[135] It was his parents, Philip Meadows and Lady Frances, sister of the late Duke, who in 1775 brought the accusation of bigamy against the Duchess.[136] The case was originally appointed to be tried on 18 December 1775 at the Bar in the White Chamber, but after several postponements it was eventually held between 15 and 22 April 1776 in Westminster Hall.[137]

On 19 April, the judges declared against the finality of the decree of the ecclesiastical court, which the Duchess had urged in her defence, and ruled that the counsel for the prosecution were not barred from proving the existence of a first marriage as the grounds for the charge of bigamy.[138] One of the most exciting moments of the trial occurred, therefore, the following day when the Solicitor-General, Alexander Wedderburn, called Lord Viscount Barrington, an Irish peer and M.P. for Plymouth, as a prosecution witness and questioned him about the marriage of Elizabeth Chudleigh and Mr. Hervey. Barrington refused to answer on the grounds that he would be breaking a confidence; the prisoner at the Bar immediately declared that she released him from his promise

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134. State Trials, xx, 390.

135. His younger brother, Charles, eventually succeeded to the Pierrepont estates on the death of the Duchess in 1788. Complete Peerage, vii, 308-9.

136. L.J., xxxiv, 509.

137. Ibid., pp.512,529,531,539,545.

138. Ibid., pp.649,655-8.

'and wished his Lordship to declare all he knew'.[139] The Solicitor-General thereupon declined to restate the question, while Barrington continued to prevaricate even when questioned by a peer. The Lords adjourned to the Parliament Chamber where, after debate, they decided that a witness was 'bound by law to answer all such questions as shall be put to him'.[140] Barrington, however, chose to remain silent until, threatened with a charge of perjury since he had taken an oath 'To speak the truth, and the whole truth', he obeyed the court's ruling and revealed what he knew of the Duchess's first marriage.[141]

Elizabeth, Duchess of Kingston, was found guilty of the felony of bigamy on 22 April 1776, the punishment for which was to be burnt in the hand and a term of imprisonment of no longer than a year.[142] The Duchess, however, appealed to the Statute of Edward VI, and although the Attorney-General, Edward Thurlow, strongly opposed granting her the privilege of the peerage, the judges unanimously upheld her claim; she was discharged with the simple injunction of paying her fees.[143]

The importance the Lords attached to the state trials before Parliament was indicated by the practice of ordering a Call of the House to coincide with the trials so as to secure as high an attendance

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139. Ibid., p.660.
140. Ibid.
141. Ibid; Walpole, (Yale) Correspondence, xxviii, 265.
142. State Trials, xx, 632.
143. Fortescue, Corr. of George III, iii, 352.

as possible.[144] The order that the House be called over on each day before proceeding to Westminster Hall hence had the dual purpose of retaining their lordships' presence in London as well as facilitating the ceremonial procedure of the Lord High Steward's procession to Westminster Hall.[145]

State occasions have always been crowd-drawing attractions whatever the circumstances, and the Parliamentary trials of the period 1714-84 were no exception, arousing the interest and fascination of lords and public alike. Public curiosity was further encouraged by the usual practice of holding the trials in Westminster Hall. On 26 April 1725 it was strongly contended 'that the crimes with which that lord [Macclesfield] was charged were of such a public nature that they required the most public trial, that all the nation might be present if possible, and either be satisfied of his innocence or the justice done upon his offences'. Nevertheless, it was decided by 59 votes to 17 that the trial be held at the Bar of the House of Lords in the White Chamber of Parliament.[146] Fifty

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144. E.g., the presence lists record 153 and 152 as present on 24 June and 1 July 1717 when the House was called over for the trial of the Earl of Oxford, but the critical nature of the conferences held with the Commons in the intervening days was sufficient to maintain a high attendance of the lords : 137,153,136 and 146 present on 25,27,28 and 29 June, respectively (L.J., xx, 509-10, 512-13,514-5,517,520-1,522). 104 were present at the Call of the House on 5 May 1725, but this had risen to 120 by the following day when Macclesfield's trial began. The lengthy duration of the proceedings made it more difficult to retain the peers in town, and at the next Call of the House on 5 May 1725, the attendance had fallen to 93 (ibid., xxii, 531-2,554). In 1776, the House of Lords was called over before every single sitting of the Kingston trial, thus ensuring a high attendance rate throughout; 158,155,152,154,143 being counted present on 15,16, 19,20,22 April 1776 (ibid., xxxiv, 645,650-1,652,658-9,661-2).

145. E.g., ibid., xx, 478,495,508,511,525(1717); xxvii, 35,61-2,65, 67,69,72,75,78(1747); xxxiv, 562,645,651,654,659,662(1776).

146. H.M.C. Portland MSS., vi, 1 (The letter, dated 26 April, attributes the debate to 25 April). L.J., xxii, 519.

years later, the confined area of the Upper Chamber was the most convincing argument for transferring the trial of the Duchess of Kingston to Westminster Hall, for 'After such a space had been allotted for the prisoner and her attendants, for the counsel, witnesses and agents, such a space for the persons attending the trial to pass and re-pass, it was found that there would be no room for the admission of auditors of any rank or condition whatever; or that if there might be for a few, it would be impossible to draw any line to ascertain who they should be'. [147] Furthermore, a trial lost none of its authority and solemnity for being held in Westminster Hall, for as was argued by Lord Abercorn during the same debate, 'when we sit in Westminster Hall, it must be deemed this House'. [148]

One of the recommendations of the Lords' Committees to consider precedents for the conduct of trials would be that the Lords Address the Crown to direct the officers of the Board of Works to erect a court in Westminster Hall. [149] This was constructed to appear as much alike the Lords' chamber as possible. Seating accommodation had also to be provided, however, for the members of the House of Commons, as well as for the public who had been fortunate enough to obtain tickets of admission to the trials. The seating plan for the trial of the Earl of Oxford in 1717 was as follows: [150] three rows of enclosed seats on the west side of

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147. Almon, Parl. Register, v, 120 (14 December 1775).

148. Ibid., p.128; L.J., xxxiv, 533.

149. E.g., ibid., xx, 234,235(1715); xxxi, 63,70(1765); xxxiv,542, 543(1776).

150. B.L.Add.MS.42779, f.10. This seating estimate for 1717 is very similar to that provided by Sir Christopher Wren for the trials of 1716 (L.J., xx, 279). Hence, where doubt arises due to the illegibility of certain figures in the 1717 plan, the earlier totals have been quoted.

Westminster Hall were reserved for peeresses and their daughters, and allowing 18 inches of room for each, these could accommodate 153;[151] behind them, another six rows provided 382 seats for those who had received peers' tickets. On the east side of the Hall, an enclosed area of 36 seats was reserved for foreign dignitaries who, on the day of a trial, would previously assemble in the Painted Chamber so as to proceed in one body to their allocated places.[152] In the remaining space along the east wall were to be seated 535 members of the House of Commons. To the left and behind the Bar at the north end of the Hall were seats for the 32 members of the Commons' Secret Committee. The Lord Great Chamberlain, the master of ceremonies, had two seats reserved for him behind the Bar, while above the Bar itself were two galleries to seat 370 ticket-holders. Five window seats could accommodate a further 125 people. This remained the basic format of the court at all the trials in the period 1714-84. Changes were made, mainly in order to increase the seating capacity: for the impeachment of Lord Lovat in 1747, a gallery was also erected behind the throne at the south end of the Hall and an extra four benches were situated behind the Bar, the intention being to provide as much room as at the trial of the rebel lords in 1746 when the Commons, as a House, had not been present.[153]

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151. This privileged category of auditors was extended in 1747 to include the wives of peers' eldest sons, and in 1776, their widows. L.J., xxvii, 41(1747); xxxiv, 563(1776).

152. H.L.R.O., Records of the Lord Great Chamberlain, Miscellaneous Records (note from Sir Charles Cottrell Dormer).

153. Compare the seating plan for Lord Lovat's trial, London Magazine 1747, inter, pp.112-3, and that for Lord Byron's in 1765, H.L.R.O., Records of the Lord Great Chamberlain, Miscellaneous Records.

It was also customary to decorate the court, the benches, the Bar, as well as the throne with a cloth of crimson, the expense of which in 1765 came to £5000.[154]

Admission to Westminster Hall on the days of a trial would be by ticket only.[155] Every peer who had attended the House of Lords at some stage during the session, or would be present before the commencement of the trial proceedings, was entitled to a bundle of 6 or 7 tickets (the number would be decided by the House) which they could distribute as they pleased.[156] The higher dignitaries, such as the King, the Prince of Wales, the Lord High Steward, the Lord Great Chamberlain, the Lord Chief Justices, would be allowed a larger number of tickets and each had his own box or enclosed area of the court for the accommodation of his guests. Those of the King and his family would be distinguished from the others by being set apart on the south side of the Hall, on either side of the throne, and covered with a canopy.[157] Furthermore, tickets would also be bestowed for their own use on the officers and servants of the House of Lords in attendance at the trial.[158] The House of Commons also stood adjourned over the period of the trials

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154. Grosley, Tour, ii, 148; Walpole, (Yale) Correspondence, xix, 280 and n.1. The cost at Sacheverell's trial in 1710 was £3000, Holmes, Sacheverell, p.118.

155. For samples of tickets, see H.L.R.O., Records of the Lord Great Chamberlain, Miscellaneous Records; B.L.Add.MS.45418, f.48 (Hastings's trial). Tickets would be printed on different coloured card for each day of the trial; see H.L.R.O., Records of the Lord Great Chamberlain, Letters and Papers, ii, MS.156, p.129.

156. E.g., L.J., xx, 279(1716); xxvi, 607(1746); xxxi, 112(1765).

157. Grosley, Tour, ii, 148. See also plans, Supra, inter. pp.169-70. and infra, inter. pp.199-200.

158. H.L.R.O., Records of the Lord Great Chamberlain, Letters and Papers, ii, MS.153, p.117 (1746 and 1747); MS.154, p.121 (1760); MS.155, p.125 (1765).

The Board of Works Gallery

Barons Box

H. Stewards Box

D. of Cumberlands Box

Peeresses

Peeresses

Peeresses

Barons

Barons

Barons

Dukes

Dukes

Marquis & Earls

Earls

Earls

Earls

Earls

Viscounts

Barons

Bishops

Bishops

Bishops

Bishops

Peeresses

Peeresses

Peeresses

Peeresses

Steps to the Gallaries

Steps to the Gallaries

Entrance from the Lobby

Entrance to the Court

Throne

Woolsack

Woolsack

Table

Clerks Table

Clerks

Clerks

Clerks

in 1746, 1760, 1765 and 1776, but the distribution lists do not show that any tickets were set aside for the members of the Lower House, and it must be concluded, therefore, that they competed for peers' tickets on these occasions, just like other members of the public.[159] The arrangements made in Westminster Hall meant that about 2000 people could be seated in the court on each day of a trial.

The distribution of the ticket quotas to the lords appeared, at least officially, to be a well-governed process. Tickets were to be collected by the peers themselves, and the location and time at which they would be available were advertised in the press.[160] This did not deter the peers from attempting to sidestep the rules: the Bishop of Gloucester, in 1765, sent a written note to the Lord Great Chamberlain, the Duke of Ancaster, requesting his tickets and promising that he would 'sign the book tomorrow'.[161] There was also an expedient that enabled any two peers in collusion to procure extra tickets for themselves: this was the clause that allowed the tickets of an absentee to be collected by another, providing two lords vowed on their honour that 'such lord, they believe, will personally appear' before the trial.[162] Furthermore, by entrusting the ticket distribution to the Lord Great Chamberlain's servants, the House of Lords was almost encouraging abuse of the process.

The consequences of these infringements were particularly apparent in the trials of the early Hanoverian period. On several occasions the trial proceedings were delayed because of the Lords'

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159. E.g., C.J., xxv, 183(1746); xxviii, 872(1760); xxx, 344(1765); xxxv, 708(1776).

160. E.g., H.L.R.O., Records of the Lord Great Chamberlain, Letters and Papers, ii, MS.153, p.117(1747); MS.156, p.129.

161. Ibid., Miscellaneous Records, Lord Byron's trial 1765 (A letter among the documents on Byron's trial, but dated 4 June 1765).

162. E.g., L.J., xx, 279(1716); xxxiv, 562(1776).

procession was unable to pass through the lobbies and the Hall itself until the crowd had been cleared.[163] On 9 February 1716 neither of the two Houses could at first take their places in the court because the overflow from the public galleries had taken occupation, not only of the seats reserved for the Commons but also of the peers' benches.[164] Before proceeding to Westminster Hall on 16 March 1716 for the second day of the Earl of Winton's trial, the Lords, in view of the large crowds and the inconvenience caused on the previous day, ordered 'That no person whatsoever presume to stand below the steps of the throne, in the court below'.[165] By mid-century, however, these problems appear to have been overcome, mainly due to the Lords' strict enforcement of the orders that admission be restricted to ticket-holders only. This seems to have been particularly the case on the first day or so of a trial, until it was known how full the Hall would be. If there were vacancies, tickets could be purchased for the later sittings , at a high price.[166] Horace Walpole's comment following the Ferrers trial of 1760, however, was that, 'It is astonishing with what order these shows are conducted. Neither within the Hall nor without was the least disturbance, though the one so full, and the whole way from Charing Cross to the House of Lords was lined with crowds'.[167]

This is particularly surprising in view of the lengthy period that the audience had to wait after taking their seats before the

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163. E.g., ibid., xx, 524(1717).
164. Ibid., xx, 285.
165. Ibid., xx, 313.
166. Grosley, Tour, ii, 149 n.
167. Walpole, (Yale) Correspondence, xxi, 388-9.

trials began. The doors to Westminster Hall would be opened to admit the public at 7 a.m., except at Lord Lovat's trial, which was at an hour later.[168] Entry was via Westminster Hall Gate which opened onto New Palace Yard.[169] Peeresses and others, assured of their seats in the private boxes of senior peers and officials at the trial, did not need to appear until after 8 a.m., when they would be admitted at the door, which also led to the House of Lords from Old Palace Yard.[170] The lords, however, were never ordered to convene in their own House any earlier than 9 a.m., and from 1760 the hour was postponed to 10 a.m., while the trial proceedings usually began an hour later.[171]

State trials were great social occasions; everybody who was anybody wanted to be there. One observer at Lord Byron's trial in 1765 remarked: 'It would be hard to conceive a more brilliant meeting. It contained all the chief ladies of quality in the three kingdoms...none of those ladies had neglected her attire, or forgot her jewels'.[172] The ladies were particularly concerned that they be given places appropriate to their status and importance. In a letter to the Duke of Ancaster reminding him of his promise of tickets for Earl Ferrers's trial, Lady Caroline Dewar also sought confirmation that she would be permitted to sit as a peer's

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168. E.g., L.J., xxvii, 35(1747); xxix, 630(1760); xxxi, 112(1765); xxxiv, 562(1776). The Journals do not specify the times for the earlier trials.

169. H.L.R.O., Records of the Lord Great Chamberlain, Letters and Papers, ii, MS.153, p.117.

170. Ibid., ii, MS.156, p.129.

171. L.J., xx, 308,309(1716), 491(1717); xxii, 519(1721); xxix, 629 (1760); xxxi, 112(1765), B.L.Add.MS.33069, f.35; L.J., xxxiv, 562(1776).

172. Grosley, Tour, ii, 149.

daughter. She concluded her letter as follows: 'Lady Caroline will be extremely obliged to his Grace to let her know what time will be most proper to be there and imagines the ladies are to be dressed without hoops'. [173] The Lord Great Chamberlain was not the only peer besieged with petitions for tickets and seats at the trials; on 15 April 1765, the Duke of Newcastle was to expect a visit from Mr.John Butler, a very grateful father who wished to thank his Grace for securing his son a place in the Earl of Lincoln's gallery. [174]

An interesting consequence of the trials was the effect they had on the trade of small businesses in the vicinity of Westminster Hall. In 1765, Sarah Butler, the proprietress of the coffee house called 'Waghornes, the door of which opens into the passage adjoining into the House of Peers', petitioned the Lord Great Chamberlain for permission (which she received) to remain open during Byron's trial on the grounds that ' it will be of great advantage to her as well as of use to many lords...because she apprehends that the peers may have occasion to come to her house before they go into Westminster Hall as many of their lordships did at the trial of Earl Ferrers in the year 1760'. [175] In 1747, several of the shopkeepers who had been forced to close temporarily their businesses in Westminster Hall when the scaffolding was set up for the trial of Lord Lovat, requested tickets for the trial, 'which may contribute to make us

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173. H.L.R.O., Records of the Lord Great Chamberlain, Miscellaneous Records, Lord Ferrers's Trial 1760.

174. B.L.Add.MS.33069, f.25. Lincoln was High Steward of Westminster 1759-94, and Newcastle's nephew.

175. H.L.R.O., Records of the Lord Great Chamberlain, Letters and Papers, i, MS.65, p.106; MS.130, p.147; MS.132, p.148.

some amends for the loss we shall sustain thereby'.[176] Some people, however, were not to be excluded from a trial whatever the effort it would take to obtain entry:[177]

> At the trial of Lord Ferrers, a curious person who had not been able to procure admittance, got upon the leads, and fixed himself at one of the windows in the roof, which gave light to the Hall upon the right side of the throne. While he was making an effort to see, an iron rod upon which he leaned, broke, and he fell from a height of above forty feet upon the spectators, who filled the rows placed under the sky-light. It seems to be a sort of miracle that nobody was either killed or wounded, and the curious gentleman occupied, during the remainder of the trial, the place he had obtained with so much hazard.

The last impeachment of the eighteenth century was that of Warren Hastings, for corruption. When this was instigated in February 1788 it revived a procedure that had been in abeyance for forty years. In the intervening period, the supremacy of the common law, as a standard of conduct against the less exacting legal demands of the law and usage of Parliament, had been fully established. This,together with the growing specialization of the legal process in the House of Lords, reflected in the deference shown there to the opinion of the lawyers, meant that the intention to impeach Hastings was strongly opposed by the legal establishment. The constitutional value of its use against political offenders had also been

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176. Ibid., ii, MS.153, p.117.
177. Grosley, Tour, ii, 149-50 n.

surpassed by more modern practices; although there were political undertones to the impeachments of 1716 and 1747, there was no such suspicion about its employment against Macclesfield in 1725. When Lord Melville was impeached in 1806 - the last case ever brought by the House of Commons, he was tried by procedures that would have been perfectly acceptable in the lower courts. [178]

The right to be tried by their peers remained a privilege of the lords until it was abolished by the Criminal Justice Act 1948. [179]

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178. For a full discussion of this case and its implications, see P.J.Marshall, The Impeachment of Warren Hastings. Melville in 1806 was acquitted of the charge of misappropriating official funds.

179. Bond, Guide to the Records, p.111.

V I

THE ARRANGEMENT OF BUSINESS

The time of meeting of a new Parliament was appointed by the King, and made known to the members of the House of Lords in the writ of summons to Parliament.[1] The eighteenth century saw the development of longer Parliamentary sessions as the pattern of the first few decades after the Hanoverian succession, that is, of meeting in the early months of each year, was abandoned and a new practice of summoning Parliament before Christmas became the norm. This experiment was first conducted for the session 1717-18: the King's Speech on 21 November 1717 (which was read by the Lord Chancellor) expressed pleasure at being able 'to bring the sitting of Parliament into a more proper and usual season of the year. I hope such an early meeting will not only be a benefit to the public, but a convenience to your private affairs'.[2] It remained the pattern for the next six sessions of Parliament.[3] Between 1724 and 1739, however, the Government reverted to the earlier practice, and Parliament once more sat between January and May of each year. But the outbreak of war with Spain in 1739 necessitated an early meeting of Parliament on 15 November 1739,[4] and the long era of wars that ensued established this as a regular feature of Parliamentary

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1. Harrowby MSS., document 35(q); May, Parliamentary Treatise, p.33.
2. L.J., xx, 554.
3. There were also additional, short, summer sessions of about a month's duration in 1721 and 1727. The original session of the first Hanoverian Parliament lasted from 17 March 1715 to 26 June 1716, a break in proceedings being effected by several approximate fortnightly adjournments: e.g. ibid, xx, 237-41; Timberland, History, iii, 43.
4. Ibid, xxv, 426.

life.[5]

Respect for the old forms, however, remained strong, and until well into the reign of George III the King's Speech included a formal apology for an 'early' summons to Parliament.[6] Nevertheless, by the same period the pre-Christmas sitting had officially become regarded as the appropriate time for proceeding to business. The first session of the thirteenth Parliament of Great Britain met between 10 May and 21 June 1768. It was opened by commission and on the eleventh the Lord Chancellor, in his speech to the two Houses, declared that no business would be instigated until 'the usual time of meeting'.[7] The May sittings, therefore, served only to execute the necessary formalities at the start of every new Parliament, so as to save time when the Houses met for business in November. Parliament usually proceeded to business a few days after the opening day and after the King's Speech had been given due consideration.[8]

The annual Parliamentary session, therefore, lasted for about six months of the year, relieved by a recess of four to five weeks at Christmas and about ten days at Easter. The duration of a session was determined by the ministers,who had to achieve a compromise between the need for concluding all the necessary official business and the political inexpediency of making further demands on members eager to leave town. This was particularly a problem in the House of Lords where most of the major measures of the session would not be brought on until near its conclusion, having first to have been

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5. There were six exceptions up to 1784, namely the sessions of 1751, 1753, 1765, 1770, 1772 and 1774.
6. E.g., Compare L.J. xxxiv, 487 (26 October 1775) with ibid, xxxi, 4(10 January 1765).
7. B.L.Add. MS.32990,f.41; L.J., xxxii, 149.
8. Parl.Hist., vii,921; Almon, Parl.Register, v, 2.

considered in the Commons.[9] Formal notice would be given to the Lord Chancellor on which day the House could rise for the holidays and to what date it could stand adjourned.[10] When Parliament was eventually prorogued for the summer recess, it was usually for no longer than about two months at a time. These short prorogations were intended to meet the necessity of emergency sittings due to crises, and meant, therefore, that Parliament had to meet on odd days during the recess; but these were purely formal occasions.[11] Contemporaries were divided in their opinion whether the Crown possessed the authority to summon Parliament by proclamation for a day earlier than that to which it had been prorogued.[12] The question was settled by the Act of 2 George III, c.20, section 117, which empowered the Sovereign, on a threat of invasion, to call Parliament together on fourteen days notice, whether it stood adjourned or prorogued.[13]

For most of the eighteenth century the Parliamentary working week was from Monday to Friday. Saturday sittings were quite normal during the early part of the Hanoverian era, but by the middle decades of the century they had become an irregular occurrence and, if the House did meet on a Saturday, it was usually to deal with formal business only. On Saturday 25 May 1765, George III came to the House of Lords to give the Royal Assent to legislation before

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9. H.M.C. Denbigh MSS., p.297 (8 March 1774).
10. B.L. Add. MS. 32 972, f.275. An adjournment had ostensibly to be the decision of the House. Although the Crown did have the authority to signify to Parliament that it was his 'pleasure' that it adjourn over a period, both Houses were at liberty to ignore the recommendation if they so wished, though they never did so. For example, L.J., xxvi, 522,523 (1745); xxxii, 158 (1768); B.L. Add. MS. 38 198, f.47.
11. For an account of the procedure on these days, see infra, pp. 499-506.
12. Harrowby MSS., document 35(q), 30 January 1755.
13. B.L. Add. MS. 38198, f.47; Statutes at Large, viii, 635.

proroguing Parliament for the summer recess.[14] The new Parliament of 1768 was opened by commission on 10 May; the House of Lords sat on each of the next four days to dispose of formal business, and the Saturday sitting of 14 May was simply meant to allow the Commons to return a joint Address proposed by the Lords as a reply to the Commissioners' speech, which was then ordered to be presented by the Lords with White Staves at the hour specified by the King, which was for 1 p.m. that day.[15] It was also acceptable to appoint a legal hearing for a Saturday.[16]

Normal practice did not exclude the possibility of exceptions; Lord Rockingham at first expected the Government to bring in the Regency Bill of 1765 on Friday 26 April and to press for a second reading and Committee stage either the same day or on the Saturday.[17] After successive long and busy days in the House in June 1767, the Duke of Newcastle did not relish the prospect of a Saturday sitting on 20 June and resolved that unless he could 'prevent' the appointment he would have to be absent. Newcastle's views, however, were apparently shared by enough other peers to enable him to achieve his aim, for, on resuming the House after the third sitting of the Committee on the East India Dividend Bill on 19 June, a further session of the Committee was ordered for Monday the twenty-second of the month.[18] The third reading of the East India Regulating

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14. L.J., xxxi, 216-8.
15. Ibid., xxxii, 153. For another example, see ibid, xxxvi, 200 (25 January 1780).
16. Ibid., xxxii, 467 (10 March 1770).
17. Grafton Autobiography, pp.32-3. The Bill was not introduced until Monday 29 April. See also infra, p.228.
18. B.L. Add. MS.32 982, ff.352,356,359; L.J., xxxi, 643.

Bill did stand appointed for a Saturday, but fearing there might not be a respectable attendance on 18 June 1773, the House was ordered to be summoned.[19] The irregularity of appointing important measures for consideration on a Saturday, however, was made clear in a debate on 13 December 1779 when the Earl of Effingham moved to discharge the Order of the Day for the Committee stage of the American Habeas Corpus Bill because of the thin attendance of peers. The Duke of Manchester observed that the Bill had been introduced on Friday 10 December 'after they had heard counsel in a cause; and when he was sensible there could not be six lords in the House. He had left it when there was not that number, and it was brought in after he went away. It had been read a second time on Saturday, a day when lords expected no business'.[20] He was followed by Earl Ferrers who avowed that he would have attended on Saturday if he had known that the second reading stood for that day, 'but it was so uncommon, so extraordinary, that neither he, nor many others, suspected that a Bill of such importance could have been read on such a day'.[21] The Lords only twice met on a Sunday in the period 1714-84; this was on the demise of Queen Anne and George II.[22]

The normal five-day week could be curtailed periodically by an adjournment on certain formal occasions. Parliament annually commemorated the anniversary of three historic events: the execution of Charles I on 30 January, the Restoration of 1660 on 29 May, and

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19. Ibid., xxxiii, 678, 680-1.
20. Almon, Parl.Register, xv, 117. A total of 23 peers had attended the House on 10 December, but the presence list for the eleventh contained only three names: Lord Chancellor Thurlow, and the Bishops of Rochester and St.David's. L.J., xxxvi, 16,17.
21. Almon, Parl.Register, xv, 117; for the debate see pp.116-17.
22. L.J., xx, 3; xxx, 3.

the Gunpowder Plot on 5 November, in observance of which a church service was held in Westminster Abbey. Neither House of Parliament could sit to do business on these days unless they had previously attended the celebration services.[23] The procedure on these days was for the House of Lords to convene as usual in the Parliament Chamber, but immediately after Prayers the Lord Chancellor adjourned the House to the following day. The peers present then proceeded, on foot, across Old Palace Yard to Westminster Abbey, where pews had been reserved for them. At the conclusion of the service, the Lord Chancellor would be accompanied to his coach by the bishops, to whom he would bow before taking his leave. It was also customary for the Lord Chancellor to place a guinea in the collection plate. When Sir Dudley Ryder deputised for the Earl of Hardwicke on 30 January 1755, he found that no-one attended to receive the gift 'because as I suppose the Chancellor sent the money himself lest his desiring my attendance might look like a design to save a guinea'.[24]

In 1732, the Lords deliberately refused to celebrate the Restoration,[25] and although the occasion was again observed in later years there was a tendency during George III's reign to adjourn the House for a short period, inclusive of the anniversary.[26] The celebration of 30 January continued to be faithfully observed in the usual manner and, on the occasions that the holiday fell on a week-end, the House adjourned over the next sitting day.[27] The annual

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23. Ley MSS., 63/2/11/1, f.96.
24. Harrowby MSS., document 35(q), 30 January 1755.
25. H M C. Egmont Diary, i, 278.
26. E.g., L.J., xxx, 280 (1762); xxxi, 621 (1767); xxxiii, 442 (1772).
27. E.g., ibid, xxv, 454(1739); xxx, 150(1762); xxxiii, 235(1772); xxxiv, 16(1774); xxxvi, 27(1780).

commemoration of the event did not please everybody, however. When the Earl of Sandwich pleaded the customary adjournment and the forthcoming week-end as an excuse for there being no time to produce the documents relating to the navy by Monday 2 February 1778, the Duke of Richmond, who had made the motion, replied that 'he had not forgotten that day, but he should not observe it, nor condole with Government on what had happened on that day — and though it had happened to his own ancestor, it was right, and he was glad of it'.[28] The correspondence between John Hatsell and John Ley in late October and early November 1801 reveals that the only instance when the celebration of 5 November was not observed was during the interregnum of the mid-seventeenth century.[29] After the Hanoverian succession, it also became customary for Parliament to adjourn over the Sovereign's birthday and, after 1760, over that of Augusta, Dowager Princess of Wales.[30]

The Upper House of Parliament sat on about 70 to 100 days per session, which appears to have been ample for dealing with business in the eighteenth century. Business in the House of Lords was usually slack during the early part of the session as most items of public business were first considered in the Commons, so that the Lords spent day after day in deliberation upon various judicial cases and private legislation. Many peers, therefore, would deliberately not attend early in a session, confident that no matters of importance would arise and that every sitting of the House would

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28. Walpole, Last Journals, ii, 94-5.
29. Ley MSS., 63/2/11/1, ff.94-6.
30. E.g., George I (28 March) L.J., xx, 431 (1718); George II (10 November), ibid, xxvi, 517 (1745); George III (4 June), ibid, xxxi, 415 (1766); Dowager Princess of Wales (30 November), xxxiii, 18 (1770).

be 'only a day of form'.[31] This inevitably meant that the Lords were particularly busy during the latter half of a session, being under pressure to bring all business to a natural conclusion without delaying the close of the parliamentary session longer than necessary. This imposition on the Lords' time was a genuine grievance of the peers, and frequently voiced in debate by both administration and opposition supporters, depending on what political advantage or use could be made of it. On 24 May 1756, Lord Hardwicke, among his arguments for opposing the Militia Bill, expressed the opinion that their lordships ought 'not to pass any bill for introducing a new and standing law, that comes up from the other House, unless it comes up so early in the session as to leave us sufficient time to take the advice and assistance of the judges upon it, and to consider every clause of it maturely'.[32] So many members of both Houses had already left town by the last week in May 1766 that the Marquess of Rockingham felt obliged to explain to George III that it would be impolitic, therefore, to propose in Parliament the provision of an establishment for the royal princes, as the scheme was already being opposed on the grounds of the 'lateness in the session and the thinness of Parliament'; to do so would be to expose the Government to accusations of staging an 'intended surprise...as an attempt in Administration to take the merit of the measure entirely to themselves without giving others an opportunity of participating'.[33] When the East India Company Regulating Bill was brought on in the

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31. B.L. Add. MS. 35 617, f.143 (1780).
32. Parl.Hist., xv, 740.
33. Fortescue, Corr. of George III, i, 345.

House of Lords on 11 June 1773, all attempts to obtain information relevant to the measure from the Commons were obstructed by Lord North's Government, ostensibly on the grounds of the advanced time of the year. Rockingham and six of his followers, now in opposition, signed a Protest, stressing the Lords had a duty and right to hold a detailed consideration and inquiry as much as the Commons. [34]

> We conceive that the reason of dispatch assigned for this refusal of all sorts of information to be unworthy [of] the legislative and judicial character of the House. We are persuaded that, invested as we are with a public trust of the highest importance, we ought, in all cases, to postpone our amusements to our duties; and are bound to measure our consideration of the affairs before us, not by the season of the year but by the nature of the business. ...If we once admit the advanced period of the session as a reason for refusing to ourselves every information required by the case, the Commons have it in their power to preclude the House from the exercise of its deliberative capacity, they have nothing more to do than to keep business of importance until the summer is advanced, and then the delay in that House is to be assigned as a sufficient ground for a precipitate acquiescence in this.

Despite the congestion of uncompleted business that occurred at the end of a session, the House of Lords placed only two limits on the amount of business that could be brought on in the House; these were the orders limiting the time for receiving petitions for private legislation and for judicial appeals. [35] In a short speech on 18 November 1776 which he concluded with a motion to appoint a final

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34. L.J., xxxiii, 670-1.

35. Supra, p. 100; pp. 141-2.

day for receiving private petitions and judges reports for the 1776-7 session, the Earl of Marchmont complained with some concern about the tendency early in a session to put off business to a later date: [36]

> ...in the winter time little done, and little to do; everything put off from time to time, till the spring or summer, when everything comes together; what with bills from the other House, what with reports from the judges, what with national affairs, what with appeals, and what with private applications, all the business was crowded into a few weeks of the summer, to the very great inconvenience of the peers attending the business, and to the no great benefit of the public.

There was as yet, however, no tight schedule to follow concerning the arrangement of business in the House. Advance warning of intended business would usually be of a few days notice, but rarely longer. The means for reserving a portion of the Lords' time for a particular item was either by Orders of the Day or by notice of motions. The Orders of the Day mainly concerned public business, but any matter before the House could form an Order. [37] The procedure was for a peer to move the House 'that a day be set apart for the solemn discussion of [the item of business], and that the Lords be summoned'; the order would then be 'entered in the books as an order in form'. [38] The question of with whom lay the responsibility for doing so formed the subject of a debate in the Upper House on 11 April 1783 when

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36. Almon, Parl.Register, vii, 38.

37. E.g., The petition of the Scottish peers, 20 and 21 February 1735, Timberland, History, iv, 360-3, 366-75, L.J., xxiv, 465-7; the motion to dispense with a Standing Order on an estate bill, 30 March 1767, ibid., xxxi, 546; the second reading of a divorce bill, 22 January 1771, ibid., xxxiii, 39-40.

38. Debrett, Parl.Register (2nd.ser.)xi, 108.

several Opposition peers found to their dismay that the second reading of the Irish Judicature Bill did not stand appointed for that day as they had expected. The Earl of Abingdon stressed it was 'the business of the Minister to give notice of the particular day' and he laid the task firmly at the feet of the Duke of Portland, the newly-appointed First Lord of the Treasury, and Leader of the House of Lords.[39] Portland, for his part, denied this, insisting that it was 'not more peculiarly his duty than that of any other peer'; but his reason for renouncing responsibility for the Bill was simply that it was not a Government measure or, rather, not of his Administration: 'With regard to the Bill in question, their Lordships must know that he would have had no hand in framing it; it had been carried to the stage it had attained by others, and consequently he could not answer for its contents. He left it, therefore, wholly to the judgement of their Lordships when to proceed with it, and in what manner'.[40] The next to speak was Lord Sydney who, as Thomas Townshend, M.P. for Whitchurch and Home Secretary in the recent Shelburne Administration, had introduced the Irish Bill into the House of Commons and, following his elevation to the peerage, had also moved its first reading in the Lords.[41] He avowed that he would have retained the stewardship of the measure had not 'an interregnum of administration...taken place, [for] he had upon the opinion of some noble members of that House, of the first weight

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39. Ibid., p.108. According to the Journals, Abingdon was absent on 11 April 1783, L.J., xxxvi, 642.

40. Debrett, Parl.Register (2nd.ser.) xi, 109.

41. Townshend was created Baron Sydney of Chislehurst on 6 March 1783 and took his seat in the Lords the same day. The Irish Judicature Bill was read the first time in the Upper House on 10 March, L.J., xxxvi, 608,610.

and authority, forborne to agitate it further, from a consideration, that to do so after he had quitted his Majesty's service, would be extremely indecent and improper'. Unless inconsistent with the Lord's rules he would now, however, move that the Bill be read a second time in a few days time and that the Lords be summoned. [42] Thereupon, the Duke of Richmond entered the dispute and called on Portland to acknowledge 'that a bill having been brought in by a former administration, was no argument why the administration in power, when it passed into a law, were not responsible for it. It behoved them either to take up the bill, if they approved of it, and conduct it to its completion; or to reject it, if they disapproved of it, or had any system of their own forming, that they thought preferable'. [43] The debate was brought to a close by ex-Lord Chancellor Thurlow who assumed the blame for advising Sydney on what steps to take, and also for taking a joint decision with Lord Mansfield to the effect that, since several peers had expressed no objection to the Bill at the first reading on 10 March, 'such sort of speaking to the Bill did not render it necessary that the House should be summoned'. [44] Lord Mansfield, who sat as Speaker of the Lords since Thurlow's dismissal by the Portland Ministry, finally put the question on Sydney's motion appointing the second reading of the Bill as an Order of the Day on Monday 14 April, which was approved by the House. [45] The incident demonstrated that the responsibility

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42. Debrett, Parl.Register (2nd.ser.) xi, 109-10.

43. Ibid., pp.111-12.

44. Ibid., p.113.

45. L.J., xxxvi, 643. For the debate see Debrett, Parl.Register (2nd.ser.) xi, 107-14; also Parl.Hist., xxiii, 730-35. The Irish Bill passed through its stages on successive days 14 to 16 April, and received the Royal Assent on the seventeenth. L.J., xxxvi, 646,648,652,656.

for making a motion that an item stand as an Order of the Day, and also the optional accompaniment that the Lords be summoned for that occasion,[46] rested with the peer who had undertaken the task of conducting the measure through the formalities of its Parliamentary stages, and if it was a government affair, this role would be performed either by the Leader of the House or by the Minister whose department was directly involved.

Business stood appointed by this means for virtually every Parliamentary day; it was necessary, however, that an item should have received the prior approval of the House before it could be thus distinguished. Hence, most Orders of the Day concerned the appointment of Committees of inquiry, or the various stages of legislation, particularly the second reading and Committee stages, though the third reading could also be made an Order if some objections remained unresolved. Precedence was given to the first Order entered in the journals for that day, irrespective of the greater importance of any other; but the Lords 'were competent to postpone or anticipate, as they might think proper';[47] the order of the Orders themselves, therefore, could give rise to a debate. On 16 February 1779, three items of business stood appointed for the attention of the House : the attendance of W.Parker, printer of The General Advertiser, the second reading of the Bill to amend the Court Martial Act, and a summons of the Lords to attend the service of the House which, in the light of the next day's proceedings, was a notification of the

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46. E.g., Bill for regulating elections in Scotland : there was no summons for the second reading on 10 April 1734, ibid.,xxiv, 413,418.

47. Almon, Parl.Register, xiv, 122.

intention to raise the case of Admiral Keppel.[48] This was the order in which the items were appointed on 15 February.[49] The next day, a shout for the Orders brought the Marquess of Rockingham immediately to his feet to request that the last of the three be considered first. The Earl of Sandwich, First Lord of the Admiralty, insisted on observing the proper order. Several speeches followed on the point of order, with Earl Bathurst, the former Lord Chancellor,[50] arguing in support of the Marquess on the grounds that 'a clear distinction was visible on the present occasion, because...[it was] an Order on which their Lordships had been specially summoned to attend, and which in fact, as well as the genuine language of Parliament, rendered it the first Order of the Day'.[51] Though many disagreed, including the Lord Chancellor, Lord Thurlow, the issue was decided in favour of Rockingham, and he was permitted to move that the charge and sentence upon Admiral Keppel be read, and that the thanks of the House be extended to him for his part in defending the kingdom. This was agreed to without any dissent, whereupon the Lords proceeded to take action against Parker.[52]

Individual items of business might also be appointed for a particular hour of the day. These were not to be taken literally, but rather designated the issue concerned to be the first public business of the day; for example, counsel on the Calicoes and Linen Bill were to be heard at midday on 27 April 1720, when it constituted the only Order of the Day.[53] On 17 August 1715, the House of

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48. For this practice, see infra, p.223-6.
49. L.J., xxxv, 575.
50. Bathurst had resigned as Lord Chancellor in June 1778, but he remained a member of Lord North's Ministry and, as Lord President of the Council from 1779 to 1782, had a seat in the Cabinet.
51. Almon, Parl.Register, xiv, 122.
52. L.J., xxxv, 376.
53. Ibid., xx, 309, 310.

Lords resolved that it would be put into a Committee on the Bolingbroke Attainder Bill at 2 p.m. the following day; no other business was to intervene, and the Lords were summoned. The second reading of the Ormonde Attainder Bill was postponed to the eighteenth. The Bolingbroke Bill was the first item of public business considered on 18 August, and when the Committee of the Whole House had completed its work, the Lords decided to proceed immediately with the remaining stages of the Bill; the same decision was taken regarding Ormonde's Bill.[54] These Bills were given priority because of the order of 17 August; but the next Order of the Day considered by the House, namely the Committee stage of the Militia Bill which had been appointed on the sixteenth, displaced an Order made four days earlier, on 12 August, for the second reading of the Bill for continuing the laws on Irish and Scotch linen. At the end of the sitting, this Order was put off to 19 August 1715.[55]

Knowledge beforehand of what the next Order would be meant that the Lords could often drift into a discussion of the matter, although no steps had been taken to bring the issue properly before the House. On 28 January 1779, peers had already begun to informally discuss the Bill to augment the militia before Lord Chancellor Thurlow intervened to propose that the Order of the Day be read so that 'business might be more regular'.[56] Once the House had entered into an Order, no other motion could be entertained by the assembly

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54. Ibid., xx, 169, 171,172.
55. Ibid., pp.163,168,172.
56. Almon, Parl.Register, xiv, 544; L.J., xxxv, 807.

until that which formed the Order of the Day had been determined, not even if a second or subsidiary motion was directly relevant to it. The Duke of Manchester's first motion on 18 December 1775 to postpone the commitment of the American Prohibitory Bill until after the recess, was negatived without a division after a short debate.[57] Lord Chancellor then moved the Order of the Day for the Committee stage of the American Bill, but before Lord Scarsdale could take the Chair, Manchester drew attention to the petitions of Bristol merchants against the Bill, which he wished to present. He was answered by the Earl of Sandwich who spoke 'to the matter of order; [and] said no motion could be received while the Order of the Day was before the House'.[58] This strict interpretation of the rule carried the day, and the House was put into Committee without receiving the petitions. It was left to the Marquess of Rockingham to try again on behalf of the merchants at the third reading of the Bill, when the Government peers once more raised objections about irregularity in procedure and successfully obstructed the petitions being received by the House.[59]

A somewhat similar situation occurred on 5 May 1783. The first Order of the Day was for the third reading of the Annuity and Lottery Bill. When the Order had been read and the measure brought regularly to the attention of the House, the Earl of Shelburne asked that a Protest entered against a similar Bill in 1781 be read and, at the conclusion of his speech, proposed a resolution that all future

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57. Almon, Parl.Register, v, 159-60; Parl.Hist., xviii, 1094-6; L.J., xxxiv, 537.
58. Almon, Parl.Register, v, 160-1.
59. Supra, pp.96-7.

loans be conducted so as to effect a reduction in the national debt. He also declared that he would have a second resolution to put before the House. He was answered by Earl Fitzwilliam, who spoke directly in reply to the resolution proposed. The next speaker, Viscount Stormont, objected to the form the proceedings were taking; he stressed that Shelburne's motion was an infringement of proper order, and that the only way of resolving the situation was to pass or reject the Bill so as to be free to consider the resolution. Ex-Lord Chancellor Thurlow suggested resorting to a procedural device :[60]

> ...it certainly was the most orderly way of proceeding, to determine on the Order of the Day, that order having been moved for; but then it was at the same time clear, that his noble friend in the blue ribbon [Shelburne] had suffered that Order of the Day to be entered upon by mistake, not recollecting that his motion should have been made previous to it; but, however, if the noble Viscount persisted in the form being so strictly observed, it was still in his noble friend's power, with the indulgence of the House, to recover all, by moving the Order of the Day to be adjourned for an hour.

After a brief discussion, this procedure was adopted. The Protest was read, and both of Shelburne's resolutions rejected after debate, before the Bill was read a third time and passed.[61] The incidents of 1775 and 1783 demonstrate how inconsistent the House of Lords could be in enforcing its own rules. The implication from Thurlow's speech is that unless peers who violated the rules of procedure were

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60. Debrett, Parl.Register (2nd.ser.) xi, 171.

61. For the debate see ibid.,pp.159-80; also Parl.Hist., xxiii, 808-26; L.J., xxxvi, 665.

called to order by other members, infringements of this and other rules would pass ignored.

When all the Orders of the Day had been disposed of, the House was at liberty to hear new motions,[62] or adjourn.[63] No adjournment could take place, however, until all the ordered business had been read.[64] If there was not enough time to proceed on all the Orders appointed for one day, this was usually due to there having been one or more debates which had taken up the House's time, and not because of the amount of business. If ordered business was left outstanding at the close of a sitting, therefore, or if the Lords wished to put off an item to another day, the Order of the Day was read and its postponement agreed to by the House.[65] If the House intended to adjourn over a period any pre-arranged business for those days had to be postponed.[66]

New business or individual motions did not qualify to be made Orders of the Day. This restriction gave rise to the practice for members to give advance notice to the House of motions they proposed to make. This notification would usually be given at the commencement of public business or at the close of the day, though it could equally well be made whenever most convenient to do so. On 3 April

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62. E.g., ibid.,xxiii, 419-20 (1729); xxxv, 576-8 (1779). The Journals also show that the House did consider items of unordered business, both public and private, between Orders of the Day (e.g. ibid.,xxxi, 408-10). No statement indicating this to be a clear violation of a rule of the House (as was the case in the Commons) has been found; see Thomas, House of Commons, p.97.
63. E.g., L.J., xxi, 569-70 (1721); xxiv, 404-5 (1734); xxxvi, 665 (1783).
64. Almon, Parl.Register, x, 402 (Richmond's speech).
65. E.g., L.J., xx, 367 (1716), 489 (1717); xxi, 638-9 (1721); xxxi,118(176
66. E.g., Militia Bill (11,13,15 July 1715), ibid.,xx, 113,116,117; xxi, 80 (23 February 1719).

1770 the Earl of Chatham gave notice of his intention to introduce a bill to rescind the House of Commons' decisions on the Middlesex election at the second reading of George Grenville's bill to Regulate the Trial of Controverted Elections.[67] Chatham's bill was introduced and given a first reading after the Whitsun recess, on 1 May 1770, but the question to appoint a date for the second reading was opposed, and the Bill rejected.[68]

At times, the notice would take the form of indicating the subject of the motion or resolutions that would be proposed; on 20 January 1752 the Duke of Bedford moved and secured the approval of the House that the Polish Treaty signed at Dresden the previous September be considered by the Lords on the twenty-eighth, thus giving the Pelham Ministry advance warning of his intention to attack the treaty.[69] On 21 February 1764, Lord Lyttelton filed a complaint in the Lords against a book entitled Droit le Roi and moved that it be condemned as a 'traitorous libel'.[70] He had given notice of the motion four days earlier, and the Rockingham Opposition had decided that in doing so he ought also to divulge 'in part' the subject of the motion and thereby procure, to a certain degree, an immediate censure on Government.[71]

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67. Bedford Journal, p.624, and L.J., xxxii, 535; cf. Parl.Hist., xvi, 924.

68. L.J., xxxii, 563.

69. H.M.C. Stopford-Sackville MSS., i, 179,180; L.J., xxvii, 625. For other examples, see Almon, Parl.Register, x, 132 (23 January 1778), L.J., xxxv, 275; MSS. North, d.25, f.60 (13 November 1775), L.J., xxxiv, 507.

70. Ibid., xxx, 477, and Walpole, Memoirs of George III, i, 305-6.

71. B.L. Add. MS. 32965, ff.1-2; and L.J., xxx, 474.

> By this step it will prevent Administration being able to take any precautions, by which they might take out the sting which otherwise this affair must carry with it. For indeed, if the motion was deferred; or if made tomorrow without acquainting the House with the subject matter; if Administration seized the author, publisher, etc. between this and the debate — it will make all accusation and reflections on their negligence rather flat.

Equally common, however, was the practice of simply making an announcement that a motion would be made on a named day. On 15 January 1770, the Government peers prevented the House of Lords from taking a decision on the notice given by the Marquess of Rockingham by summarily moving that the House adjourn for a week. The Protest entered by the Opposition, as a result of this incident, began as follows:[72]

> DISSENTIENT
>
> 1st. Because the noble Lord who moved the House, on Monday last [15 January], that the Lords should be summoned for Wednesday, had declared in his speech, that he meant on that day to make a motion, which, in its consequences, would afford the opportunity of bringing under consideration of the House, many matters of the most essential concern to the happiness of this country; and we think that this House ought not, at any time, to refuse the request of a peer, who desires that the House may be summoned upon a motion which he promises to make, and which he declares to be of importance.
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> And we are the better warranted in this opinion, as we apprehend that, in fact, there are no instances of the House rejecting a motion for the Lords to be summoned.

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72. Ibid., xxxii, 403; Parl.Hist., xvi, 730-4; Chatham Corr., iii, 395-6.

When the House resumed on 22 January, Rockingham made his motion that the Lords take into consideration the state of the nation, and the debate was appointed for three days later.[73] In contrast, the Duke of Richmond chose not to give any indication of his reasons for summoning the House for 22 November 1770, on which day he initiated the Opposition's attack on the Government over the conflict with Spain with regard to the Falkland Islands.[74] Most notifications were accompanied by the motion that the Lords be summoned for the service of the House on the particular day, which was moreover the form in which the Journals indicate that notice of a motion had been given. The Earl of Chatham, however, adopted neither of these Parliamentary forms for announcing his intention of making a motion in the House of Lords on the first day after the Christmas recess of 1774; instead, he placed a notice in the newspapers. Faithful to his word, on 20 January 1775, he moved to Address the Crown to order the withdrawal of the British troops from Boston. The motion was defeated by 18 votes to 77. One peer who deliberately stayed away from the House was Lord Mansfield, who asserted that 'it was usual to summon the Lords on any unusual motion'.[75]

There was no stipulation that the notice had to be given by the peer who would make the motion; it was the Earl of Shelburne who, on 4 December 1770, moved for summoning the Lords for the following day when Chatham proposed a resolution relating to the Middlesex

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73. L.J., xxxii, 407; see also infra, pp.237-8.
74. Chatham Corr., iii, 149, and iv, 1-18n; L.J., xxxiii, 10,12.
75. Walpole, Last Journals, i, 420; L.J., xxxiv, 290; Almon, Parl.Register, ii, 5-17; Parl.Hist., xviii, 149-68.

election.[76] Notice of official government business would be given by the Leader of the House or the ministers whose departments were concerned.[77] On 22 January 1771, the Earl of Sandwich, the recently appointed First Lord of the Admiralty, informed the House that the papers delivered by the Spanish Ambassador to the King that day in relation to the Falklands dispute, would be laid before them on the twenty-fifth,[78] on which day the Earl of Rochford, Sandwich's successor as Secretary of State for the Northern Department and now the Leader of the House, presented the relevant documents by His Majesty's command. An Address for further papers concerning Spain's role in the conflict was agreed to, but not an Opposition motion for an Address seeking information about negotiations with France.[79] On 25 February 1767 the Duke of Bedford announced to the House his intention of summoning the Lords for a day,a week later,when he would move for American papers; he was persuaded to defer doing so by the Duke of Grafton's declaration that the Government had already decided to lay the papers before the House, and named that day a fortnight later, that is, Wednesday 11 March, for taking them into consideration.[80] In fact, the copies of letters from the colonial

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76. Chatham Corr., iv, 41, and L.J., xxxiii, 19,20; another example, see Debrett, Parl.Register (2nd.ser.) iv, 231 (4 April 1781).

77. E.g., Lord Harwich, the American Secretary, announced and presented the papers about the disturbances in America, 15 and 28 November 1768 (L.J., xxxii, 174,182-5). Harwich is better known as the Earl of Hillsborough, an Irish title he inherited in 1742. On 17 November 1756 he was created Baron of Harwich in the British peerage, and so qualified to sit in the Upper House of the Westminster Parliament. He was honoured with the British earldom of Hillsborough on 28 August 1772.

78. Chatham Corr., iv, 74. No reference to this appears in the Lords Journals, xxxiii, 37-40.

79. Ibid., pp.42,43.

80. Bedford Journal, p.598, L.J., xxxi, 496. Grafton was acting head of the Chatham Administration 1766-8.

governors in America were not presented to the Lords until 12 March, when they were ordered to lie on the Table. A week later (20 March 1767), the House ordered that they be taken into consideration on the thirtieth.[81] The debate that day was adjourned without appointing another date for continuing the discussion, but at its conclusion Lord Temple moved that the Lords be summoned for 10 April 'without acquainting [the House] to what purpose'.[82] When the Lords, however, proceeded to consider the Order of the Day for this summons on 10 April 1767, the Duke of Bedford moved the House for an Address, requesting that the part of the Act of the Council of Massachusetts Bay which indemnified the rioters of 1765 be considered by the Privy Council. The motion was rejected by 36 votes to 63.[83]

A high degree of co-operation and personal courtesy appears to have existed between opposition and government peers on the question of deciding on a convenient date for ordering business. The leading peers of the Opposition to the Grenville Administration envisaged no debate in the Lords on Monday 29 April 1765 unless one arose on the question as to which day the second reading of the Regency Bill should stand appointed. It was hoped that this could be avoided if the leaders of the Rockingham and Bedford factions could agree in favour of Wednesday 1 May, as that would leave Monday and Tuesday 'open for Newmarket'.[84] Earl Temple also wanted to be certain of the time-table for the Regency Bill; he therefore consulted Lord Chancellor Northington, who confirmed that the Bill would be introduced and

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81. Ibid., pp.516-7, 531.
82. Ibid., p.546; Walpole, Memoirs of George III, ii, 318-9.
83. Ibid., pp.322-3, L.J., xxxi, 566.
84. B.L. Add. MS. 32966, f.259. The discussions were conducted by the Marquess of Rockingham and Earl Gower.

given a formal first reading on 29 April, and that the second reading was expected for the thirtieth.[85] When the Royal Marriages Bill was first intimated in the Lords on 20 February 1772 by a message under the Royal Sign Manual, it proved impossible to reach an agreement on any of the suggested dates for the legislative stages of the measure; the Government wanted to appoint the second reading for Monday 24 February; the House generally favoured a later day, while Lord Rockingham stressed the importance of a 'decent' interval between the first and second readings. The discussion continued outside Parliament. After the debate, Rockingham was asked by the Earl of Rochford, Leader of the House, 'whether Tuesday would do, and I thought they would have given no longer time, but I have just now a note from him that it will not be till Wednesday'.[86] A similar concern for the convenience of fellow peers was shown among peers interested in a private affair. The Earl of Shelburne who, on 12 April 1771, presented a petition on behalf of the Common Council of the City of London to be heard by counsel against the Durham Yard Bill, first consulted with 'Lord Mansfield, who means to attend it, and Lord Marchmont, that it should be read a second time on Thursday and the City then heard'.[87]

The same civility applied to communicating the subject of the business to be raised. At the end of January 1775, the Opposition to North's Administration still had no indication of what the Government had in mind to do after the papers relating to the disturbances

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85. P.R.O. 30/8/62, f.95. The Bill was read a second time on Tuesday 30 April, L.J., xxxi, 162-3.

86. Portland Papers, PwF 9058a; L.J., xxxiii, 258,260,266,270,273,277. The Committee of the Whole House sat twice, on 28 February and 2 March. The Bill was read a third time and passed on the following day.

87. P.R.O. 30/8/56, f.204.

in America had been considered on 2 February. The first set of documents had been presented on 20 January and, six days later, the House appointed the date on which they would be read.[88] On 31 January, therefore, Lords Rockingham and Shelburne, 'finding no other way of knowing...asked Lord Dartmouth about the proceeding intended. He says, they mean that the papers shall be read, which will take up Thursday and Friday, and that they intended to proceed to their measure on Monday, but had put it off on account of the Duke of Grafton's convenience till Tuesday, when it will certainly come on'.[89] As the Government had planned, the second reading of the American papers took place on 2 and 3 February, and a further consideration was appointed for four days later. Immediately after Prayers on 7 February, however, a message was delivered from the Lower House requesting a conference at which the Commons, who had also been debating the American papers, communicated to the Lords their proposal for a joint Address to the Crown condemning the 'rebellion' in Massachusett's Bay and pledging support for whatever measures were needed to 'enforce due obedience to the laws and authority of the supreme legislature'.[90] Among the managers appointed to conduct the conference for the Lords was the Duke of Grafton, Lord Privy Seal. When the report had been made by the Lord President,[91] Earl Gower, the Earl of Dartmouth rose to propose that the Lords concur with the Commons in the Address. His motion, which initiated a debate that lasted until 2 a.m. on the morning of 8 February, was made only after a dispute between Lord Rockingham

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88. L.J., xxxiv, 286,296; Wentworth Woodhouse Muniments, R1-1540, printed in Rockingham Memoirs, ii, 268-9.

89. P.R.O., 30/8/56, f.162.

90. L.J., xxxiv, 305.

91. For this point, see infra, p.534

and himself as to which should speak first.[92] The Address was approved by 87 votes to 27.[93]

Later that year, the Earl of Rochford approached Lord Rockingham for details of the 'business of importance' that the Opposition intended to bring on in the Lords on 1 November, and notice of which had been privately given to Lord Denbigh.[94] Rochford respectfully wished 'to know, if it is not meant to be kept a secret, what the business is, as I can assure your Lordship I will make it my business not to suffer any motion to come from Government by surprise'.[95] It is not known whether the Marquess sent a reply, but on 1 November 1775 the Duke of Manchester proposed a censure motion on the Government's policy of employing foreign mercenaries in America; it was defeated by 53 votes to 32, and by 22 proxies to 1.[96] Surprise motions, however, appear to have been the exception rather than the norm in the House of Lords.[97] The Duke of Richmond went to the House on 15 March 1780 with the intention of giving notice of a motion he wished to make two days later about the coastal defence

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92. Infra, p. 386.

93. L.J., xxxiv, 301,303,305-6. For the debate, see Almon, Parl.Register, ii, 34-60; Parl.Hist., xviii, 265-96. These were the figures in the division on the main question; there had also been a vote of 104 to 29 on the previous question.

94. Denbigh was a Lord of the Bedchamber from 1763 to 1800. In 1773, Horace Walpole described him as 'the lowest and most officious of the Court-tools'. Walpole, Last Journals, i, 175. See also infra, p.261.

95. Wentworth Woodhouse Muniments, R1-1619.

96. L.J., xxxiv, 496; Almon, Parl.Register, v, 25-42; Parl.Hist., xviii, 798-816. The last two sources quote the division figures as 53 to 31.

97. That is, for business other than legislation.

of the kingdom. Since Lord Amherst, Commander-in-Chief of the army was present on the fifteenth, the Duke graciously acquainted him of his intentions. Amherst felt that a reply would have to be made to the charge, but pleaded that he could not be ready to do so in so short a time. Richmond,therefore,'told him that although I certainly thought it my duty to bring to light matters I thought wrong, yet he should never complain of unfairness in me as to the manner and, therefore, I would put it off till after the holidays'.[98] Richmond eventually summoned the Lords on 18 April 1780; the date chosen for the debate was a week later, 25 April, but the motion that the House be put into a Committee for discussing the defenceless state of Devon and Cornwall, was negatived by 51 votes to 92.[99]

It was a generally observed rule that only one item of business likely to cause debate would be arranged for any day. On 3 February 1784, the Earl of Effingham gave notice of two motions he wished to make next day. The first was on a matter of 'some consequence', namely, that a Committee be appointed to consider the case of insolvent debtors. The second, however, concerned a subject 'in which the honour of the House was most materially concerned; every man in the kingdom was affected by it, and it was therefore the duty of every man to put a stop to it if in his power'.[100] There was no doubt in Effingham's mind which was the more important of the two motions, and it caused him some surprise when Lord Chancellor Thurlow prepared to adjourn the House after the Duke of Bridgwater had

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98. Olson, Radical Duke, pp.178-9.

99. L.J., xxxvi, 105,109; Parl.Hist., xxi, 459-91. Amherst spoke last-but-one in the debate.

100. Debrett, Parl.Register (2nd.ser.) xiv, 112.

proposed summoning the Lords on the first motion. Effingham insisted that his aim had been to ensure a debate on the second issue, which he then explained concerned certain resolutions of the House of Commons. Lord Stormont next rose to his feet to express his astonishment at Effingham's intention of discussing two important issues in one day, but he, too, would leave the matter to the judgement of the House, though arguing that peers ought to be given a longer period of notice in which to attend upon matters of such consequence as that intimated by the noble Earl. Effingham, however, had every confidence of obtaining a full House at that time of year, even upon one day's notice, and assured his opponent that he had entertained making both motions 'merely on conceiving there could not possibly be any debate on the first, therefore he thought there would be sufficient time for their entering upon the latter'.[101] If there was any doubt about the feasibility of doing so, he favoured postponing consideration of the insolvent debtors issue. In this he was supported by the Duke of Chandos; and when the House met on 4 February, Effingham's motions of censure on resolutions of the House of Commons constituted the first and only business of the day.[102]

The desire to avoid more than one lengthy item of business on any one day was also revealed in an incident on 1 March 1757.

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101. Ibid, p.114. For the debate, see pp.112-14.

102. L.J., xxxvii, 38. The Commons votes that were being attacked were those of 24 December 1783 and 16 January 1784, which were proposed by the Fox-North Opposition and secured by their overwhelming majority in the Lower House. The first of Effingham's motions declared that an attempt by one branch of the legislature to assume a discretionary power which was vested in others by an Act of Parliament was unconstitutional. It was carried by 100 votes to 53 (including 21 and 9 proxies, respectively). The second resolution affirmed that the right of appointing government ministers was 'solely vested in His Majesty'. There was no second division. Debrett, Parl.Register (2nd.ser.), xiv, 114-47. For the political background, see Cannon, Fox-North Coalition, pp.145-83.

At the first reading of the Bill to release the members of the court-martial on Admiral Byng from their oath of secrecy, a short debate arose with regard to appointing the day for the second reading. The urgency of the issue inclined the House to take the next stage and the examination of witnesses on the following day, until Lord Chancellor Hardwicke anxiously pointed out that an adjourned appeal hearing already stood appointed for 2 March. He suggested that the House's orders could, however, 'be reversed [if] every lord present consented', and this expedient was immediately adopted.[103]

This incident clearly indicates that there had to be some means whereby at least the officials of the House knew what business had been distinguished by the Lords as Orders of the Day, and for what days they stood appointed, an instrument or device that would correspond to the modern-day order paper. In the debate on 11 April 1783 concerning the procedure for appointing an Order of the Day, the Duke of Chandos voiced two complaints: firstly, that he had not been officially informed that it was planned to proceed with the Irish Judicature Bill that day and, secondly, that the measure had not been made an Order of the Day as was customary for all matters of importance. He had only learnt of this neglect by consulting 'the clerk's paper'.[104] No further reference was made to this

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103. Walpole, Memoirs of George II., ii, 351-8; L.J., xxix, 57. The Court Martial Bill was rejected after the second reading on 2 March (ibid., pp.60-4). The appeal case of Kildare and Shannon et al. v Burton et al. came on as the only Order of the Day on 4 March after much unordered business had been disposed of. The cause occupied the remainder of the day's sitting; counsel were heard, and judgement declared (ibid., pp.67-9).

104. Debrett, Parl.Register (2nd.ser.), xi, 112.

document during the debate, and no other evidence on the matter has been found. It is not known, therefore, whether the 'paper' referred to was the current volume of the minutes of proceedings, compiled by the clerks during the sittings of the House, or a separate document simply listing the Orders that had been appointed for a particular day and drafted by a clerk for the use of the House. The existence of such a list does, however, enable one to envisage Hardwicke being motivated to separate the Orders for 2 March 1757 on being reminded by a clerk that he already had a full schedule for that day.

The House of Lords was a court of record,and its journals, therefore, were open for inspection by peers and the public alike.[105] A careful search of the journals by members would reveal what items of business had been pre-arranged for future sittings of the House. Alternatively, this laborious task could be avoided by paying a clerk to produce a copy of the entry or entries that were desired.[106] On the other hand, a peer might prefer to draft his own summary of a day's proceedings in the House and add a memorandum concerning future business,[107] knowledge of which would enable him to prepare in advance for an expected debate.[108]

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105. Walpole, Memoirs of George III, iv, 146.

106. E.g., copies of presence lists (B.L. Add. MS. 32966, f.152; 33037, f.33), of a Bill (ibid., 32947, f.321). In June 1765, Samuel Strutt, the new Clerk Assistant, apologised to the Duke of Newcastle that he could not supply the copies of the Committee proceedings that he desired because the Reading Clerk, M.R.Arnott, had taken the minutes with him 'into the country' (ibid., 33069, f.87).

107. E.g., P.R.O., S.P.45/1 (document dated 21 April 1721),see L.J., xxiii, 678-9.

108. E.g., B.L. Add. MS. 32982, f.221, see L.J., xxxi, 626-8. (2 June 1767).

It was also necessary that there be procedures for communicating the Lords' decisions and the timetable of business to peers absent from the House when orders were made, and to members of the public concerned with any measure. Evidence suggests that it had been customary, at least since the end of the seventeenth century, to publicise orders of the House that affected the public by posting them on the doors of various rooms and chambers in the vicinity of the House of Lords; for example, an order for limiting the time of receiving appeals,[109] or for publicising new Standing Orders,[110] or for notifying the time of Committees on private bills.[111] Ralph Bridges learnt that Lord Salisbury's estate bill was to be committed on 30 May 1713 'by a paper stuck up at the Painted Chamber'.[112] The greater freedom for Parliamentary reporting that was afforded the press after 1770 meant that the newspapers, too, carried notices of orders summoning the attendance of the peers at the House.[113]

These practices did not negate nor reduce the value and efficacy of the traditional methods of notifying members, that is, by personal contact and by official and private correspondence. When an Order of the Day or notice of a motion was accompanied by an order that the Lords be summoned, a notice of the arrangement was to be sent to every peer.[114] When the Lords ordered the second sitting of the

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109. H.L.R.O., Historical Collection 251, Precedent Book, f.147.
110. E.g., Standing Orders 59(1698), 67(1712), 123(1735), 129(1767).
111. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.23; B.L. Add. MS. 35875, f.164, see L.J., xxiv, 226-7.
112. Trumbull Add. MS.136/3. Bridges to Sir W.Trumbull, 22 May 1713.
113. E.g., The Daily Advertiser, 24 May 1775.
114. For a fuller discussion of this practice, see infra, p.256-7.

Committee of the Whole House on the South Sea Sufferers Relief Bill to commence at 10 a.m. on 19 July 1721, they also ordered that the peers be summoned with notice of the change in the time of meeting.[115] The decision to postpone the third reading of the Bill for quartering troops in America from 18 to 26 May 1774 was another order that had to be communicated to the members of the House. In his message to Lord Camden, however, Lord Chancellor Apsley mistakenly stated the new date to be 27 May, an oversight that Camden took advantage of in order to be absent on the day so as to demonstrate his ill-humour towards the Earl of Chatham, for whose sake the postponement had been arranged.[116] This official notice of pre-arranged business could be reinforced by letters from political leaders if the issue was one of particular importance.[117] Advance knowledge of the schedule of business was tactically advantageous for both sides in Parliament, for it allowed government and opposition alike time to muster their forces and draw a plan of campaign.[118]

Throughout the period, the amount of Parliamentary business was constantly increasing, but it never reached such intensity so that entire sittings would be taken up by ordered business only. On 2 March 1770, after a great deal of routine business had been disposed of, the Opposition moved to Address the Crown for an increase in the number of sailors employed by the navy. No previous notice of the motion had been made in the Lords, but the Rockingham group

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115. L.J., xxi, 572.

116. Walpole, Last Journals, i, 349-50; L.J., xxxiv, 214-7. See also infra, p.422.

117. See infra, p.261-4.

118. E.g., B.L. Add. MS. 33000, f.200 (2 December 1762).

had privately circulated the plan among its followers.[119] The pressure of business was far worse in the House of Commons where it necessitated the adoption of new procedures; by the early nineteenth century all notices of motions in the Lower House had to be given no later than one day before the motion was intended to be made.[120] In the Lords it was never obligatory to give any notice of a motion; those that were given were for the specific purpose of rallying members to attend, and this remained the pattern well into the nineteenth century. When Erskine May first published his Treatise on Parliamentary procedure in 1844, he could still write that 'In the House of Lords, the pressure of business is not so great as to require any strict rules in regard to notices' of motions; whereas in the Commons by that time it had become necessary to appoint particular days for considering the Orders of the Day and so leave the others free for new motions.[121]

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119. Portland Papers, P w F 9031; L.J., xxxii, 454.

120. Thomas, House of Commons, p.103.

121. May, Parliamentary Treatise, pp.166-7.

VII

THE ATTENDANCE OF THE PEERS

Peers were summoned to attend the service of the House of Lords by a writ of summons, which they were under a constitutional obligation to obey.[1] The quorum of the House was three, and an official register of those present was taken daily and entered in the minute books.[2] The presence lists, printed versions of which have been included in the Lords Journals, are not always entirely accurate, but they do constitute a source of information about attendance at the House of Lords on any particular day.[3] A member of the Upper House did, however, possess the privilege of obtaining the Crown's approval to be absent from Parliament and to appoint another peer to act as his proxy. The prerequisite of the King's licence to the absentee was implicitly recognised in the text of the proxy deeds until the abolition of the practice in 1868,[4] but a

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1. Harrowby MSS., document 35(q).
2. For a discussion of the compilation of these lists, see C.Jones, 'Seating Problems in the House of Lords in the early Eighteenth Century : the Evidence of the Manuscript Minutes', B.I.H.R., li, (1978), pp.132-145.
3. For an example of the discrepancies between the Lords Journals and the Manuscript Minute Books, compare L.J., xx, 158,332 and MSS. Minute Book, li, 9 August 1715 and 16 April 1716. After the Lords' debate and division of 26 May 1767 on the Massachusetts Indemnity Act, the Duke of Newcastle obtained a copy of the presence list so as to compile a division list of those who had voted on the issue. A comparison of the list in the Newcastle Papers, copied from the Manuscript Minute Books, with the final version in the Lords Journals confirms the Duke's own impression that some names were missing. The peers omitted from the manuscript copy were the Duke of Marlborough, the Earl of Morton, and Viscount Hereford. B.L.Add.MS.33037, f.57; L.J., xxxi, 616.
4. For an example of a proxy deed, see H.L.R.O., Historical Collection 61.

resolution of the Lords in January 1690 effectively made the practice of obtaining the King's leave no longer necessary.[5] In 1742, the Lords removed the last control on their attendance at the House by abolishing the Standing Order which imposed a fine of five shillings, to be paid to the poor's box, on each peer for every day's absence.[6]

Each session, a solid core of about one-third of the membership never went up to London and, moreover, made no arrangements to be represented by proxy. Political leaders, therefore, were annually confronted with a dual problem: firstly, to procure their supporters' presence in town for the Parliamentary session, and secondly, to secure their attendance in the House of Lords. Two constitutional procedures existed for this purpose: the most common was to order the lords to be summoned; the other was an elaboration of this practice whereby a summons was linked to a Call of the House.[7]

In 1626, the Lords resolved: 'It is to be observed, that the first or second day the House is to be called, and notice to be taken of such lords as either have not sent their proxies or are excused by His Majesty for some time'.[8] By the eighteenth century, this

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5. The question put on the resolution of 23 January 1690 was, 'Whether a lord, who has been absent all this session of Parliament without the King's leave, and has the leave of this House, may give his proxy?' It was immediately followed by another, similar question, which upon being accepted, abolished the need for a peer to seek the permission of the House of Lords to be absent, an order which had only been made as recently as 22 March 1689: 'ORDERED, That no lord or member of this House do go into the country, without the leave of this House first had for that purpose'. L.J., xiv, 157(22 March 1689), 424 (23 January 1690).
6. Standing Order No.9 (vacated 13 May 1742).
7. The first recorded instance of a Call of the House, or a roll-call of the membership, occurred in the House of Commons in 1549. Wilding and Laundy, Encyclopædia, p.73.
8. Standing Order No.27 (1621).

Order had become virtually obsolete,[9] and although technically a Call of the House could be ordered whenever attendance was markedly low, each instance in the period 1714-84 occurred in conjunction with business of exceptional importance pending or anticipated in the House.

At the time the Call was ordered, the Lord Chancellor would be directed by the House to send circular letters to absent peers acquainting them of the order and summoning them to attend the service of the House on a named day.[10] These letters would be delivered by porters, the Clerk of the Journals, and the doorkeepers of the House of Lords to the town residences of the peers known to be in London at the time; they did not have to be received by the peers personally but could be left with a secretary or steward. Peers still in the country would receive their letters of summons either by the General or the Penny Post.[11] The Treason Act of 7 and 8 William III, c.30[12] stipulated that peers entitled to sit and vote at the trial of a peer for treason should be summoned at least twenty days before its commencement.[13] The Act, however, did not specify how peers ought to be summoned. In 1746, therefore, a Lords' Committee was appointed to consider and advise how the

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9. There is but one instance of the Order being observed during the period studied; see infra., p.258.
10. E.g., H.M.C. Portland MSS., v, 626-7 (Summons to the Call of the House for 9 November 1721, and a draft letter of excuse); H.M.C. Hastings MSS., iii, 57, and H.M.C. Rutland MSS., ii, 197 (Treason trial of 1746); B.L.Add.MS. 35886, f.217 (Lovat impeachment 1747).
11. Ibid., ff.154-7.
12. Supra., p.189.
13. Statutes of the Realm, vii, 7.

terms of the Act could best be executed. In its report, the Committee proposed that the clauses of the Act for summoning the Lords be adopted as orders of the House, and that these be enforced by the 'ancient and usual' practices of the Lords.[14] In addition to the traditional circular letters from the Lord Chancellor, the Committee recommended that the order for summoning the members should be posted on the doors of the Upper Chamber and of Westminster Hall, and should also be published in The London Gazette.[15] In the absence of any other official statement in the Journals on the manner of publicising the summons, it is unclear whether the notices posted in public areas of Westminster Palace and in the press were innovations of 1746 or of earlier origin. Once initiated, however, it is improbable that the Lords would have abandoned such a convenient and effortless method of communication.

The period of notice given peers of a Call of the House varied according to the business with which it was associated. For all but two of the state trials in the period 1714-84, peers were afforded approximately a month from the time the order was made in which to settle their affairs and present themselves at the House.[16] The exceptions were the trials of the Earls of Oxford and Macclesfield. In the former case, the Call of the House was held on 12 June 1717, a fortnight after the order was made, though another fortnight passed before the trial began.[17] In 1725, peers were given only a week's notice (from 27 April to 5 May) of the Call of the House to be held

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14. L.J., xxvi, 599.
15. Ibid., pp.598-9.
16. Ibid., pp.599,616(1746); xxvii, 34,61(1747); xxix, 620,626,646 (1760); xxxi, 67,74,127(1765); xxxiv, 513,531,545,645(1776).
17. Ibid., xx, 478,495,511.

at the Earl of Macclesfield's trial;[18] but this followed an earlier order made on 22 March intended to secure the attendance of members while the initial impeachment proceedings were in progress. No roll-call of peers was held on that occasion.[19] At most of the trials, the House of Lords was further called over on each day the court sat.[20] The advance notice given for the other Calls ordered by the House varied between a week and a fortnight. This pattern remained constant throughout the period.[21]

On the appointed day, the lords would be called over in reverse order of precedence, commencing with the most junior baron.[22] The names of the defaulters were then called over again, and excuses, either of a peer's minority, illness, senility, or absence abroad, offered on his behalf. These were usually sent in letters to fellow peers or to the Lord Chancellor. At the trials of 1717, 1746, and 1747 peers who wished to be excused on the ground of illness had to send two witnesses to attest to the same on oath at the Bar of the House.[23] In the seventeenth century it was at their peril that peers ignored the Lord Chancellor's summons or made no attempt to obtain leave to be absent, for the House could punish offenders either by inflicting heavy fines[24] or by having them taken into custody.[25] The last

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18. Ibid., xxii, 522, 532.
19. Ibid., pp.470,480.
20. E.g., ibid., pp.532,534,555(1725); xxix, 646,650(1760); xxxi, 127,130(1765); xxxiv, 562(1776).
21. E.g., ibid., xxii, 238,249,250(1724 - a fortnight's notice); xxvii, 536,542 (1751 - a week); see also xxxi, 239(1765 - a fortnight).
22. See supra., p.173.
23. L.J., xx, 478(1717); xxvi, 599(1746); xxvii, 34(1747).
24. Lords' Committee's report of 25 July 1820, ibid, liii, e.g., pp.356(1641), 357(1669), 358(1692).
25. E.g., ibid., p.658(1696); H.M.C. Buccleuch MSS., i, 330.

instances of such punitive action being taken at Calls of the House were in 1692 and 1696 respectively. Hence, when Robert Ord wrote to his patron, Lord Carlisle,[26] on 28 June 1746 with the details of the Lords Committee's report regarding the treason trial of 1746, he could make a safe assessment of the likelihood of fines being levied on absentees:[27]

> I am sorry to tell your Lordship, that it is now generally thought that the same spirit which has been thus exerted to carry these trials into Westm[inster] Hall, and to have the Lords summoned contrary to the inclination of our governors, will exert itself in compelling as full an attendance as possible; and my Lord Bath[28] told me particularly that I must let your Lordship know, that all defaulters would be fined, and the fines estreated and levied. I had no opportunity of speaking to Lord Harrington[29] about it, but from what has already passed I think it very probable that fines will be set; as to the levying of them I do not think it so probable, but whether it be proper to trust them or not, your Lordship will be the best judge.

The Earl of Carlisle clearly decided that 'they', or the Ministers, were not to be trusted for, on 4 August 1746, his two witnesses were

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26. Robert Ord was returned to the Parliament of 1741 by Lord Carlisle as the member for the borough of Morpeth. Sedgwick, The House of Commons 1715-54, ii, 312.
27. H.M.C. Carlisle MSS., p.202.
28. William Pulteney who had been created Earl of Bath in 1742. Between 10-12 February 1746 he tried to form an alternative ministry to the Pelham Whigs in which the Earl of Carlisle was temporarily Lord Privy Seal.
29. The Earl of Harrington was appointed Secretary of State for the Northern Department in November 1744. He temporarily resigned the seals on 10 February 1746, but was reinstated four days later after the Earl of Bath's failure to form an administration. Harrington remained at the Northern Department until November 1746.

duly examined by the Lords together with those of eight other peers who had been absent at the trial on 28 July, three more peers being excused on 31 July, and 5 and 7 August.[30] The order of 4 August that the remaining list of defaulters be considered in a fortnight's time, however, was allowed to lapse. The lords absent from Oxford's impeachment in 1717 were excused,without any ado as to the hearing of reasons, immediately following his acquittal on 1 July 1717.[31] After 1746, the Lords do not appear to have paid any attention to the list of absentees at a Call of the House, and the formality of that part of the procedure was admitted by Lord Chancellor Henley after Earl Ferrers's trial in April 1760. On 20 April, Henley replied to a letter from the Earl of Exeter:[32]

> My Lord,
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> I have the honour of your Grace's wherein you mention being absent on the Call of the defaulters. There was none after the trial and the Call before we went down was only to settle the book. No excuse was then made or expected. I had 20 letters but there took no notice of them and I suppose they will not be called again. If they are and your Grace is absent I will mention the Earl of Exeter's with the rest which I have.

The effectiveness of a Call of the House of Lords in the eighteenth century is concealed by the association of so many with the state trials of the period, for these were occasions in which social attractions and curiosity were as much responsible for the high attendance

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30. L.J. xxvi, 626,631,632,633.
31. Ibid., xx, 523.
32. H.L.R.O., Records of the Lord Great Chamberlain, Miscellaneous Records, Earl Ferrers's trial, Lord Henley to the Earl of Exeter, 20 April 1760. See also L.J., xxix, 646,651. The House of Lords again imposed fines to enforce a Call of the House in 1820. The occasion was the Bill for the degradation of Queen Caroline. May, Parliamentary Treatise, p.148.

figures as obedience to the summons of the House. In the period 1714-84, a Call of the House was ordered on twelve separate occasions, of which six were carried out: the Calls prior to the trials of 1717, 1725, 1747, 1760, 1765, and in 1751 when the Regency question was put before Parliament on 26 April.[33] Calls of the House were also ordered in anticipation of the Dover peerage case January 1720, the various inquiries conducted by the House in November and December 1721, the Bills of Pains and Penalties against the Jacobite conspirators of 1722, the consideration of the Roll of Standing Orders in January 1724 prior to Macclesfield's trial in 1724, and the original appointment of the Duchess of Kingston's trial in 1775;[34] but all these were adjourned and allowed to lapse.

The efficacy of a Call of the House can be shown by comparing the presence numbers on the day of a Call with those on preceding and subsequent days. For example: 126 peers had been drawn by the promise of an important debate on 22 May 1717 when the Earl of Oxford's petition, praying the House to appoint a day for his trial, was presented. Ten more were present on 27 May when a Call of the House was ordered for 12 June. In the intervening period, the attendance figures fell sharply, but rose to 140 on the appointed day of the Call.

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33. L.J., xx, 495(1717); xxii, 532(1725); xxvii, 61(1747); xxix, 626,646(1760); xxxi, 74,127(1765); xxvii, 542(1751). The Lords were also called over, without a Call of the House having been specifically ordered, at the trials of 1716, 1746 and 1776 (before the Lords' ceremonial procession to Westminster Hall), and at the opening of the session, 4 December 1741; ibid., xx, 285,310(1716); xxvi, 616(1746); xxxiv, 645(1776); xxvi, 9 (1741).

34. Ibid., xxi, 176,192(1720); 597,601,611(1721); xxii, 107(1723); 238,249,250(1724); 470,480(1725); xxxiv, 513,531(1775).

Numbers were again slightly lower on the next few sitting days, but they began to climb once more as the day of the trial drew near. The attendance figures remained high while Oxford's fate was debated by both Houses, the lowest being 136 on 28 June; the peak attendance of 153 peers was scored twice, on 27 June and 1 July. Attendance at the House of Lords thereafter declined as the close of the session approached.[35] When the Lords decided on 15 December 1719 to order a Call of the House in connection with the debate on the Dover peerage case after the Christmas holiday, 71 peers were present, although the recess was so close at hand. At the next sitting on 18 December, the attendance had slumped to 45. Yet, when Parliament reconvened on 12 January 1720, 122 peers were present in response to the Call of the House, though the roll-call itself was adjourned.[36]

Once it became clear that it was not intended that the House be called over, attendance soon fell away. The 1721-22 session of Parliament opened on 19 October 1721, with 60 peers present but, at the next sitting of the House on the twentieth, only eight lords chose to attend. The House then adjourned to 26 October, but when only 40 members turned up to proceed with business that day, the continuing poor showing of peers decided the House in favour of ordering a Call of the House for a fortnight later on 9 November. The Lord Chancellor was instructed to write to the absent members to acquaint them of this order, and that their attendance was then 'expected'.[37] This action had the desired effect, and the presence

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35. Ibid., xx, 465,475-6,494-522.
36. Ibid., xxi, 176,179,192.
37. Ibid., 592,595,596,597; H.M.C. Portland MSS., v, 626.

list for 9 November recorded 90 peers as attending that day. The actual Call of the House, however, was postponed for another fortnight till 23 November. One of the reasons offered in favour of this rather than an earlier date was that 'since there was business of so great importance to be considered, the absent lords ought to have the more time allowed them to settle their affairs, in order to attend the service of the House; whereas if one week only was allowed them, many of them could not have dispatched their business so soon'.[38] The urgent business to be considered by the House of Lords was the various issues arising from the Speech from the Throne.[39] Peers, however, had already been allowed a fortnight's notification of the Call, and the postponement must, therefore, be regarded as the first step in abandoning the order completely. On 22 November, the Lords adjourned for two days after again postponing the Call of the House for another week. No reference at all was made to the order on 30 November. Moreover, since the attendance figures did not regain their peak of 9 November, it must be deduced that, in spite of the official order, it was generally understood that no Call of the House would take place.[40]

The pattern of oscillating high and low attendances can be demonstrated in all other instances when a Call of the House was repeatedly postponed. Throughout the month of April 1723 the House constantly adjourned the roll-call first ordered for 21 March. The new dates appointed were 28 March and 4, 11, and 27 April. The Lords never convened on 28 March and 11 April, while on the two

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38. Timberland, History, iii, 187-8 (9 November 1721); L.J., xxi, 601.
39. E.g., ibid., pp.601,603,605,621,632.
40. Ibid., pp.611,615-6,

remaining dates attendances of 91 and 109 were attained.[41] The aim was to retain a high proportion of members in town for as long as possible while the various Bills of Pains and Penalties against the Jacobite conspirators passed through their stages in the House. Yet the highest attendances occurred on days in which specific actions were taken against the conspirators, regardless of the order for a Call. 113 peers were present on 29 March 1723 when the Upper House considered the Bishop of Rochester's petition against being summoned to the House of Commons as a witness on the Bill of Pains and Penalties against him.[42] The peak attendance of 133 was reached on 3 May at the third reading of the Bill against George Kelly,[43] and repeated on 6 May when the Bishop of Rochester himself was brought to the Bar of the House of Lords. The attendance figures were consistently high throughout the proceedings on his Bill, reaching a low of 126 at the third reading on 15 May.[44] Thereafter, however, the attendance dropped sharply as routine business reasserted itself in the time-table of the House.

The infrequent use of a Call of the House to summon members to Parliament, and its almost total disuse at the opening of a new Parliament, reflected the unpopularity of this constitutional procedure and its general ineffectiveness. Hence, from at least the middle of George I's reign, another approach was taken by successive ministries to secure the lords' presence in London, a practice that relied on the far more acceptable method of a direct and personal appeal to individual peers. In the House of Commons, this was done by means

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41. Ibid., xxii, 107,124,132,137,148.
42. Ibid., p.133.
43. Ibid., p.178-9.
44. Ibid., pp.181-199.

of circular letters, signed by the Leader of the House and sent to the government's supporters throughout the country requesting their presence at an eve-of-session meeting at the Cockpit.[45] A similar invitation would be sent to the members of the House of Lords in the form of 'a list made out of those who it is desired would attend, and which is carried with a compliment by a messenger'.[46] In time, however, the peers' invitation, too, either took the form of a circular letter or came to be regarded as such: Lord Digby promised his uncle, Lord Ilchester, that he would explain to Lord Rochford[47] that his absence from the Government's pre-session rally and from Parliament in January 1772 was due to his recent accident. He further reassured his uncle that no reply was necessary to 'a common circular letter'.[48]

The peers' eve-of-session meetings would usually be held at the town residence of the Leader of the House of Lords, namely the peer responsible for issuing the invitations.[49] The evidence on this point, as did that on the practice of Addressing the Crown, suggests that this function was performed by the senior of the one or more peers who held the office of Secretary of State,[50] and in

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45. Supra, p. 68.

46. B.L.Add.MS.32972, f.177(1765).

47. Lord Rochford was the Southern Secretary from December 1770 to November 1775, and Leader of the House of Lords. See infra, n.50.

48. B.L.Add.MS.51341, f.99.

49. E.g., P.R.O., S.P.36/68, f.428 [c.1724-9]; Notes and Queries, c c v(1960) p.394(1762); B.L.Add.MS.32972, f.177(1765).

50. Harrowby MSS., document 35(q); Cal.Home Office Papers 1770-2, No.1040 (1772); Fortescue, Corr.George III, iv, 473-4,475(1779); e.g. P.R.O., S.P.35/48, ff.15-16(1723-4). See also, supra, p.69. The growing prestige attributed to the post of Leader of the House of Lords in its own right, quite apart from the duties of a Secretary of State, was voiced by Lord Stormont to George III in 1780 when a dispute arose between him and Lord North over the appointment of a Scottish representative peer. The Earl of Glencairn, North's choice, was returned as one of the Scottish peers to the Parliament of 1780. Fortescue, Corr. of George III, v, 130-1; I. I. xxxvi, 178.

whose office the lists would be prepared.[51] Alternatively, the role could be performed by the First Lord of the Treasury, if a peer.[52] An additional duty of the Leader of the House from George III's reign was to send a list of those present at the pre-session meeting to the King on the following morning.[53]

Invitations to these meetings were sent to peers who were assumed to be friends of government. At times, the list appeared to be particularly selective;[54] yet in October 1761, the Duke of Newcastle's original intention of excluding only the five or six 'Tories...whom he did not know' from the meeting was altered so as to discriminate against none as a result of the Earl of Bute's advice that 'they would certainly take it amiss, and if summoned, would not come'.[55] Newcastle, in omitting the names of peers known to be unsympathetic to his politics, may well have been following the practice of the Whig ministries during George II's reign. Four years later, in December 1765, Newcastle recalled this occasion when

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51. Fortescue, Corr.of George III, iv, 475(1779).

52. E.g., the Duke of Newcastle, B.L.Add.MS.32930, ff.335-6 (5 November 1761). (Parliament met on 3 November, but the King's Speech from the Throne was not delivered until the sixth. L.J., xxx, 107,113.) The evidence suggests that if a peer held the senior post in administration it was customary that the circular letters of invitation be signed by him, even if the Secretaries of State were fellow peers (e.g., the role of Grafton in the Chatham Ministry; Fortescue, Corr. of George III, i, 411-2(1766)). The precedent appears to have been set by Newcastle who retained responsibility for the task after transferring from the Northern Office to the Treasury in 1754. See supra, p. 69.

53. E.g., Fortescue, Corr. of George III, i, 199-201(1765);p.410(1766); vi, 171(1782).

54. E.g., P.R.O., S.P.35/10, f.174(1717).

55. B.L.Add.MS.32930, ff.178-9. The Duke of Newcastle was the First Lord of the Treasury. In May 1762 he was succeeded by Lord Bute who, in October 1761, was Secretary of State for the Northern Department. Yet in November 1762, the Dukes of Newcastle and Devonshire, and the Marquess of Rockingham were deliberately omitted from the list of those summoned to the eve-of-session meeting at Lord Egremont's. Notes and Queries, c c v (1960), p.394.

attempting to give the inexperienced young leader of the new Rockingham Administration advice on whom to summon, while also indicating the difficulty of deciding on a criterion for distinguishing between peers.[56]

> Do you send to all the lords, or do you leave out some? I have some notion that in this Tory reign I sent to the Tories. That may be a question now. I hear they do it in the House of Commons. Do you send to the Bedfords, or if you don't, which I suppose you do not, how do you distinguish them?

In November 1766, when the Rockinghams themselves had been turned out of office but had not as yet embarked on a stance of systematic opposition to the King's government, their supporters in both Houses were encouraged to attend the eve-of-session meetings held under the auspices of the new Chatham Administration. Newcastle was delighted to hear that the Marquess of Rockingham himself intended to attend, and proposed to write an apology for his own absence to the new Leader of the Upper House, the Duke of Grafton.[57]

Every session, however, there was a solid core of members who paid no heed to either the official or unofficial summonses of the House. The reluctance to come to town took the form of many excuses. Few failed to justify their absence in terms of ill-health.[58] For many, the prospect of a long and difficult journey during the winter months was a valid reason for remaining at their country residences; others were averse to neglecting matters of private business, the more so if they were disinterested or disillusioned with Parliamentary

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56. Wentworth Woodhouse Muniments, R 1-539 (10 December 1765).
57. Portland Papers, PwF 7527, f.2.
58. E.g., P.R.O., S.P.35/48, f.65(1724).

affairs.[59] In January 1766, Lord Viscount Torrington wrote a candid explanation to the Duke of Portland as to why he could not attend Parliament :[60]

> I cannot think of repairing to London as the removal of my family will be very expensive, and fox hounds and the country would soon make me wish to return... When you talk so highly of removals, you imagine I have ten thousand a year; but you should consider those things more seriously and not mistake every person to be a Duke of Portland.

Nor was Torrington the only peer whose financial position was the obstacle to his attending Parliament. On another occasion, the Countess of Sussex excused her husband's absence to Pitt the Younger on the grounds of ill-health; this was in addition to 'his purse being too shallow to admit of residing constantly in town'.[61]

A more difficult task for the political leaders was to secure their supporters' presence in the House of Lords. Lord Camden explained the root of the problem in a letter, dated 4 January 1776,

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59. B.L.Add.MS.28060, f.47(1783); ibid., MS.32991, f.77(1768). Portland Papers, PWF 1521 (1767), 1524 (1768).

60. Ibid., PwF 2274.

61. P.R.O., 30/8/60, f.125. The letter is dated 23 November, but no year is specified. The signature is that of Mary, Countess of Sussex, who became the seventeenth Earl's second wife in 1778. Furthermore, since the letter begs Pitt to use his influence with the King to bestow a financial provision on her husband, the correspondence must be dated post 1783. On these grounds, therefore, it is suggested that the document has wrongly been placed among the papers of the Elder Pitt.

to his son-in-law, Robert Stewart: [62]

> After the birthday, we all reassemble at the meeting of Parliament which, with us, is the season of masquerades, balls, operas, and concerts. The Parliament is one of our diversions, but by no means in such request as the others; for, if a great masquerade happens to cross upon an important debate, the latter is postponed - for good reason, because otherwise the House would be deserted for the Pantheon.

Furthermore, few peers could resist the attractions of the countryside even at the height of the London season. On 20 February 1771, the Duke of Richmond notified the Earl of Chatham that he had decided to postpone the motion he had intended to propose in the House a few days later. He gave as his reason a desire to avoid a poor showing by the Opposition in the House which their political opponents might interpret as 'a falling off of friends'. The true cause of their absence, however, was the recent mild weather; for whereas 'the frost, and the great question of the convention, [63] kept many lords in town for a great while...seven or eight at least have taken the opportunity of the thaw for a fortnight's holiday, and are gone into the country to get the little remainder of fox-hunting which the season allows of, and I find several more are very desirous of going'. [64]

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62. Pratt Papers, U840/C 4/1. The birthday celebration referred to was that of Queen Charlotte, wife of George III. She was born at Strelitz, 19 May 1744, but after her marriage in 1761 her birthday was officially kept in January. T.Williams, A Brief Memoir of Her Majesty Queen Charlotte, p.1. The House of Lords first met after the Christmas recess on 23 January 1776. L.J., xxxiv, 543.

63. The convention with Spain over the Falkland Islands. See infra, p.271.

64. Chatham Corr., iv, 97.

Some members of the House would have valid reasons for being absent; for example, the peers who were abroad on foreign embassies or in the army. Several bishops would be away simultaneously while on visitation to their dioceses. On 3 June 1767 the Lords adjourned the House until Monday 15 June, after having postponed the Committee stage of the East India Dividend Bill to the seventeenth of that month. This was done after the Duke of Bedford had successfully persuaded the House that the bishops, too, ought to be present and as 'Trinity Sunday was the general ordination day, it would be difficult for the bishops to return to Parliament before Wednesday... This reason prevailed so strongly with the House, that Wednesday was immediately ordered'.[65]

Others, especially the older members of the House, protested that they found attending Parliament too fatiguing. The Archbishop of Canterbury explained his inability to obey Newcastle's summons to attend the crucial debate of 26 May 1767[66] to the fact that he had been unable 'for some sessions past to bear the heat and the fatigue of long days in the House of Lords'.[67] Even the indefatigable Duke of Newcastle himself had to concede in 1766 that 'Long attendances in the House of Lords are become very inconvenient to one of my age; and therefore, I have, for some years, avoided them, except upon public business'.[68] There was another reason why

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65. B.L.Add.MS.32982, f.266. The letter implies that Newcastle was under the misapprehension that the House also was adjourned to 17 June, which was the first day that he attended after the adjournment. L.J., xxxi, 630,632,636.
66. See infra., pp.277-9.
67. B.L.Add.MS.32982, f.138. Another example: Gibson MSS.5200.
68. B.L.Add.MS.32966, f.391.

members of the opposition would be inclined to stay away, namely the apparent futility of opposing a government with an overwhelming majority in the House.[69] The countryside,and particularly Newmarket, further provided a welcome retreat when disheartened by failure in the Lords.[70] Both political factions and individuals could, at times, therefore best voice their opposition and personal grievances by being, in the words of Lord Camden in March 1781, 'politically absent'.[71]

There did exist, however, a formal routine procedure for summoning peers to the House. Although the exact procedure followed is not clear, evidence suggests that a note would be sent from the Lord Chancellor's office to each lord, notifying him that the Lords were 'summoned to attend the service of the House' on a named day.[72] Its similarity to the procedure of summoning members to a Call of the House caused confusion, even among contemporaries,[73] but it appears that this practice differed from a Call of the House in significant ways. The length of notice given to peers could be as little as one day or as much as a week , depending on the urgency of the affair and the pressure of business in the House. The impossibility of reaching London from Scotland or any great distance at such short notice,[74] plus the absence of any censure or any

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69. Wentworth Woodhouse Muniments, R 1-1430.

70. B.L.Add.MS.32966, ff.300,308.

71. Pratt Papers, U 840 / C 173/72.

72. E.g., L.J., xx, 639(1718); Walpole, Last Journals, i, 350. See also, supra, p.237.

73. E.g., H.M.C. Stuart Papers, v, 510, cf. L.J., xx, 608;

74. L.V.Harcourt, Rose Diaries, i, 59. Lord Percy voted in person against the Government's India Bill on 15 and 17 December 1783. Debrett, Parl.Register (2nd.ser.), xiv, 107-8.

attention whatsoever being taken of those who failed to appear, suggests that the more common procedure for summoning the House was directed at the peers present in town or in the vicinity.[75] That this is the interpretation given to the order of the Lords by contemporaries is apparent from reports of debates in the early Hanoverian period.[76]

Further evidence to corroborate this interpretation of the procedure is provided by the following incidents. On 20 February 1731, Lord Strafford moved that circular letters be sent to summon 'all the absent lords to attend their duty' at the second reading of the Pension Bill in a fortnight's time.[77] In the light of the House's action of rejecting the motion by 81 votes to 30, but yet appealing for a high attendance on the occasion by an ordinary summons of the House, it must be assumed that the meaning of Strafford's motion was to summon peers from further afield than London itself.[78] A Lords' Committee was then appointed to search for precedents of the practice of summoning peers by official circular letters. Its report presented four days later revealed that the procedure had been observed only 28 times between 1678 and 1725, and on most occasions the letters had been addressed to members absent at a Call of the House or those who had not left their proxies. The six instances between 1714 and 1725 had been to notify and summon peers

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75. Timberland, History, viii, 461-2,465(1743); Debrett, Parl.Register, (2nd.ser.), xiv, 114(1784).

76. E.g., Torbuck, Debates, vi, 453(1716); vii, 113(1719); viii, 48 (1721); ix, 241(1727).

77. H.M.C. Carlisle MSS., p.82.

78. L.J., xxiii, 618; Sainty and Dewar, Divisions.

to a Call of the House and the state trials.[79] A year later, on 24 February 1732, a similar unsuccessful attempt was made to summon the House in this manner with regard to the Mutiny and Desertion Bill.[80]

These two incidents ought to be compared with other occasions when use was made of the Lord Chancellor's circular letter as an alternative to a Call of the House. On 4 December 1741 the House of Lords supported a motion insisting on observing the Standing Order that the House be called over on the second day of the session.[81] A fortnight later, on 16 December 1741, an order was issued to summon all the lords by circular letters to attend the debates on the State of the Nation,after the Christmas recess; but within a week this order was discharged and a new one, that the letters be directed only to the absentees and those who had not previously entered their proxies, was made.[82] In January 1766 the Rockingham Administration distinguished the same category of absent peers to be summoned by official correspondence to attend when the papers relating to the disturbances in America were to be considered on 28 January and subsequent days.[83] The inclusion of the qualifying term of 'absent lords' indicates that the procedure on these occasions was intended in the first place to bring members to town.

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79. L.J.,xxiii,620-2; B.L.Add.MS.35875, ff.132-3; Add.MS.42779, ff.17-18.
80. L.J., xxiv, 28.
81. Ibid., xxvi, 9. See supra., p.240.
82. L.J., xxvi, 20.
83. Ibid., xxxi, 239.

The frequent order to be found in the Journals that the Lords be summoned was, therefore, the routine method of the House of Lords for securing a larger attendance than usual of the peers in town for a particular item of business.[84] This was a mark of distinction which the Upper House demonstrated towards private as well as for public bills, in addition to matters of national importance. In January 1720 a precedent was established when this respect was granted to an appeal case,[85] and in 1763 Horace Walpole wrote that 'no important business is agitated there without summoning the peers'.[86]

Every member of the Upper House was entitled to move that the Lords be summoned,[87] and certainly by the second half of the period it was usual to agree to the request. This was the point made by a protest of eleven peers entered in the journals after the sitting of 15 January 1770, which asserted that the 'House ought not, at any time, to refuse the request of a peer who desires that the House may be summoned upon a motion which he promises to make, and which he declares to be of importance', and that there was no precedent for such a denial.[88] This followed upon the Marquess of Rockingham's unsuccessful attempt to summon the House so as to secure a large attendance on the day that he intended to move that the House take into consideration the State of the Nation.

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84. E.g., ibid., xxi, 24(1718); xxx, 247(1762); xxxii, 115(1768).
85. Mar & Kellie MSS., S R O., GD/124/15/1197/6; L.J., xxi, 205.
86. Walpole, Memoirs of George III, i, 261.
87. An assertion made by the Duke of Portland on 11 April 1783 while defending himself against the Earl of Abingdon's charge of neglect for failing to summon the House for the second reading of the Irish Judicature Bill. Debrett, Parl.Register, (2nd.ser.) xi, 108-9. See supra.,pp.216-8.
88. L.J., xxxii, 403.

The effect that a summons had on the attendance figures in the House of Lords varied considerably. In most cases, the figures did rise in response to a summons,[89] but this was not always so. If the business of the House dealt only with routine matters day after day, the figures could fall regardless of an appeal for the members to be present. This was the case between 29 March and 4 April 1770 when attendance at the House showed a steady decline from 77 to 24, and this in spite of three consecutive summonses. However, on 5 April, the numbers immediately rose to 84 as the lords responded to the summons to attend the second reading of George Grenville's Bill to Regulate the Trial of Controverted Elections.[90]

No ministry relied entirely on the official procedure for securing the attendance of their supporters in the House, but each government in turn regularly followed the practice suggested by the Duke of Buckingham on 13 December 1718 as an alternative to the Lord Chancellor's letters of summons to peers to attend the proceedings on the Protestant Interest Bill. Buckingham proposed 'That every lord, then present, might write to his absent friends, to acquaint them with what was depending in the House; and he was sure such letters would be more acceptable and effectual than a formal summons'.[91] After the first reading of the Scottish Heritable Jurisdictions Bill on 15 May 1747, Charles Yorke wrote to his brother

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89. See the postscript to Richmond's letter to Rockingham (5 May 1771), Wentworth Woodhouse Muniments, R 1-1375.

90. L.J., xxxii, 512-36.

91. Torbuck, Debates, vii, 102. The House was also ordered to be summoned. L.J., xxi, 24.

Joseph about its progress in the Lords, remarking that the attendance had been poor and the Bill 'was within 10 or 15 of being thrown out. I hope it will be better attended tomorrow; otherwise the Government will be ruined merely by its own negligence'.[92] The Government, apparently, was guilty of the neglect of following common practice and using indirect pressure to swell attendance at the House.

Senior members of an administration regularly made direct appeals to personal friends and supposed sympathisers to attend the House and give their support to the government. Lord Gower, the Lord Privy Seal, assumed this task to write to the Duke of Bedford in November 1743.[93] On 28 January 1768, the Duke of Grafton, the Leader of the House of Lords, acquainted Lord Le Despenser that the second reading of the East India Dividend Bill was to be brought on the following day for 'an ultimate decision', and that 'a good appearance of the friends of Government will be necessary to give credit and success to it'.[94] Ministers also made use of the influence of close friends, relatives, and colleagues to enlist support for their administration in the Lords. On 15 June 1773, the Bishop of Litchfield, brother of the Prime Minister Lord North, wrote to Lord Pelham to implore him to attend the debates on the East India Regulation Bill, mainly because he was being 'so attacked by that active Minister L[or]d Denbigh... [who] insists (tho[ugh] in my opinion foolishly) on the absolute necessity of your coming up'.[95]

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92. B.L.Add.MS.35385, f.69 [misdated 13 April 1747]; L.J., xxvii, 114. Similarly, see the comments about the second reading of the Cricklade Bill, 13 May 1782 — Fortescue, Corr. of George III, vi, 18; L.J., xxxvi, 493.

93. Bedford Corr., i, 14. For another example, see Cal. Home Office Papers, 1773-5, No.789.

94. B.L.Egerton MS.2136, f.115.

95. B.L.Add.MS.33090, ff.21-2. See supra, p.231.

Lord Suffolk, though unable himself to be present in the House on 7 April 1778 when a motion for taking the State of the Nation into consideration, was expected, promised Lord Chancellor Bathurst, to use his influence with the friends of Administration so that 'as respectable an attendance as possible may be procured'.[96] Yet care had to be taken that this was not overdone. Some peers were anxious not to be mere tools of convenience for the government, and made it understood that they were to be called on only upon matters of the utmost urgency. Lord Torrington stressed this point to the Duke of Portland in January 1766:[97]

> If you shall really desire and find my appearance in the House can be of any service to the good cause, I am both ready and willing to attend, with this proviso: that you shall only send me word <u>when</u> and wherefore, and not let me be made the tack to be called for at all times. And as the majority is at present so great, I flatter myself it will be rarely.

The Duke of Newcastle was particularly active and adept in this sphere of political management. The skill and persuasion he executed so effectively during his years in government[98] he later no less enthusiastically applied to managing the opposition ranks; in May 1767 he promised a most 'vigorous exertion of my interest (where I have any) to get a great attendance' of Opposition peers at the proceedings on the Massachusetts Indemnity Act on 26 May.[99]

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96. B.L.Loan MS. 57/2, f.101; <u>L.J.</u>, xxxv, 423-5.
97. Portland Papers, PwF 2274; <u>supra.</u>, p.253.
98. E.g., <u>H.M.C. Carlisle MSS.</u>, p.148(1735).
99. B.L.Add.MS.32982, f.111.

As a result, the Opposition came within three votes of defeating the Chatham Administration in a division of 62 to 65. However, the Government too did not spare any effort in exerting pressure on its followers, and their success was acknowledged by Newcastle when he wrote of the Opposition's clear defeat on 2 June that 'The Court fetched up lords who had scarce been in the House, or had been absent many years, my Lord Castlehaven, Lord Romney etc.'. [100]

The opposition was even more heavily dependent than government on the effect of unofficial pressure to rally its rank and file supporters to the House, and furthermore did not possess the advantage of a government bureaucracy to assist in the task. The correspondence of the opposition peers abounds with instances of individual and shared responsibility for the careful canvassing of members. [101] On Friday 15 February 1782, the Marquess of Carmarthen moved the House that the Lords be summoned for three days hence, when he proposed to make a censure motion on the Ministry for recommending the recent creation of Lord George Germain as Viscount Sackville. Over the week-end, the Marquess supplemented the formal summons of the House with personal letters to more than thirty peers, 'to say I should esteem myself much honoured with their presence on the occasion'. [102] At other times, the motivation

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100. Ibid., f.237. Castlehaven was the Irish earldom of James Tuchet who was known in the British peerage as Lord Audley.

101. E.g., B.L.Add.MS.32966, f.196(1765); Add.MS.33000, f.177(1762), f.374(1765); P.R.O., 30/8/54, f.128(1772),f.130(1777); Wentworth Woodhouse Muniments, R 1-370 (1763), 791(1767); R 81-121; Portland Papers, PwF 9091 (1770); Rockingham Memoirs, ii, 269-70(1775); H.M.C. Rutland MSS., iii, 26(1780); B.L.Add. MS.28060, ff.45,47(1783). Carmarthen was the courtesy title of the heir to the Duke of Leeds. He was summoned to Parliament in May 1776 by his father's junior title of Lord Osborne.

102. L.J., xxxvi, 387,390; Leeds Memoranda, p.56.

for such exertion could be of a more personal nature: in March 1765 the Earl of Sandwich appealed to Lord Denbigh for his vote to ensure the passage of the Earl's turnpike bill through the Lords, and that he would further use his influence to secure the support of two other lords for the measure.[103] The absence of co-operation and a lack of attention to the attendance figures could result in disaster, as was the case on the occasion of the Earl of Chatham's motion on 20 January 1775 to remove the British troops from Boston, which was rejected by 68 votes to 18 by the peers present.[104] The débâcle was repeated on 7 December 1779 on the Duke of Richmond's motion for an Address to the Crown to reduce the Civil List. The Government's majority of 57 votes to 33 was increased by a total of twenty proxies in their favour, compared to the Opposition's three.[105]

The opposition leaders also made a practice of inviting known and sought supporters to political dinner parties so as to rally their followers and to decide on future conduct.[106] Care, however, had to be taken both as to whom were invited to these social gatherings or approached for their vote in the House, and to the manner of the approach, for the opposition had also to overcome the reservations of the uncommitted against being considered a part of the opposition, whereas an invitation to support the King's administration could give no offence, even if a peer had no intention of doing so.[107] Much thought was given, therefore, to the method of

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103. H.M.C. Denbigh MSS., p.294. For other examples, see Portland Papers PwF 3161(1777), 6314(1771).

104. H.M.C. Donoughmore MSS., p.282; Burke Corr., iii, 101-3,104-5.

105. H.M.C. Rutland MSS., iii, 22; L.J., xxxvi, 12,15-16.

106. E.g., Wentworth Woodhouse Muniments, R 2 A-15 [undated] R 81-205 [undated].

107. Ibid., R 1-1280.

canvassing and the need for tact. The Duke of Portland suggested to Lord Rockingham on 1 March 1770 that Lord Abingdon might well be interested to know of 'tomorrow's proceedings' and that an indirect approach by Rockingham himself stood the best chance of success, especially 'if you could do it as if by chance'.[108] Another clear practice among peers would be to entrust a regular party follower with the responsibility for rallying the support of less politically motivated sympathisers with whom he had the greatest contact. He, therefore, would have the task of notifying his satellites of forthcoming business in the House on which their votes were desired,[109] and even of making certain of their attendance by accompanying them to London.[110]

The advantages and disadvantages of sending a personal summons to peers was a point to be carefully considered before taking action as it could be counter-productive. This was the dilemma which faced Richmond early in May 1771. He had considered issuing his own cards to request a good attendance at the third reading of the Bill to disfranchise electors at New Shoreham, but had some reservations about doing so:[111]

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108. Ibid., R 1-1283. The business on 2 March 1770, which was probably being referred to, was the Opposition's motion for an increase in the number of seamen,which was evaded by a successful motion to adjourn the House. L.J., xxxii, 454.

109. E.g., Portland Papers, PwF 1517(1766), 3164(1779), 9031(1770). In the 1760s the responsibility for approaching the episcopal bench on behalf of the Opposition always lay with the Duke of Newcastle; e.g., B.L.Add.MS.32982,ff.51, 59-60,81.

110. E.g., Portland Papers, PwF 9000(1768).

111. Wentworth Woodhouse Muniments, R 1-1375. Richmond refers to the sitting of Saturday 4 May 1771.

> My doubt is that such a card from me to our friends only may appear like taking an eager part and from thence Administration may think I am concerned in the fate of the Bill, which may be a reason with them for throwing it out. On the other side, if I send such cards tomorrow morning it may get a good attendance and secure the Bill, for the Ministry people did not attend it today.

Richmond concluded the letter to Lord Rockingham with a post-script, expressing his decision not to send his own appeal for support since he recollected that the House had been officially summoned, 'which will of course bring most lords to the House'.[112] His trust in the Lords' procedure was not fulfilled; there were fewer lords present for the third reading on Monday 6 May: 35 compared to 43 on Friday 4 May. Nevertheless, Richmond was not disappointed, for the Bill did pass the House.[113]

There were annually two periods of particularly low attendance in the House: at the start and end of a session. Few peers made strenuous efforts to attend Parliament before Christmas; it was, said Lord Viscount Torrington, 'ever disagreeable and inconvenient'.[114] The state opening of Parliament and the consideration of the King's Speech on the first days of the session invariably drew a respectable attendance, often of over 80. Thereafter, however, the numbers in the presence lists fell sharply and remained at a constant low while routine matters only were dealt with, as was usually the case whenever

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112. Ibid.

113. L.J., xxxiii, 213,214.

114. Portland Papers, PwF 2243(1772). See also Grafton's speech in Almon, Parl.Register, v, 5(1775), and Lord Rockingham's comment in 1769, Wentworth Woodhouse Muniments R 1-1254.

there was an early start to the session.[115] Should important subjects be raised during this period, a summons of the Lords would secure a fuller House. After an attendance of 103 on the first day of the new session, 13 November 1770, the number of peers present thereafter even fell into single figures. However, when the Opposition made its first motions to instigate an inquiry into the Falkland Islands dispute with Spain on 22 and 28 November, and another motion relating to the Middlesex election of 1768 on 5 December, the attendance figures rose to 88, 80, and 78 respectively, the House having been summoned for each occasion.[116]

Experienced politicians also knew that it was foolhardy to expect good attendances in the House towards the end of a session.[117] Most members of both Houses left town during the Easter recess with no intention of returning for the remainder of the session. During the Easter adjournment of 1770, the Duke of Richmond expressed to Lord Rockingham his desire of being absent from London thereafter, except for a brief period in May when he would attend the proceedings on the Earl of Chatham's Bill to reverse the resolutions of Parliament against John Wilkes. His advice to Lord Rockingham, however, was pessimistic:[118]

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115. Debrett, Parl.Register (2nd.ser.), iv, 35-6. This was also true at any point during the session, e.g. Richmond to Rockingham, 17 February 1775, quoted in Olson, Radical Duke, pp.166-7.

116. L.J., xxxiii, 3-35.

117. Debrett, Parl.Register (2nd.ser.), iv, 341.

118. Wentworth Woodhouse Muniments, R 1-1293 A (18 April 1770).

> I should rather suspect he [Chatham] would drop this Bill and that you would all think it best to give over opposition for this year, as many people will be like myself very unwilling to go to town; nay more so, for I am persuaded that many very good friends would not attend, but I will if necessary.

Richmond's only other interest among forthcoming business was the Civil List papers, but this issue he hoped would be deferred 'till next year, as I think you will not be able to get a good attendance this year; and if you do not, half the good of the debate will be lost'.[119] Late sessions were usually thinly attended, however important the business,though there were exceptions; for example, 101 peers were present on 2 June 1779, the day of the debate on the Earl of Shelburne's motion on the distressed state of Ireland.[120] A far more common picture was that described by Edmund Burke to the Marquess of Rockingham later that month when, of the twelve peers entered in the Journals as having attended on 21 June, only five were present when the House rose.[121]

Contemporaries regarded an attendance of over 100, that is about half the membership, as composing a full House. High attendances could be attained during any month of the Parliamentary session,

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119. Ibid. Parliament resumed on 26 April and was prorogued on 19 May. Chatham's Bill was introduced on 1 May 1770 and refused a second reading. 132 peers were present (L.J., xxxii, 560,563). One of the other main issues after the Easter recess was the consideration of American affairs which eventually led to Richmond's motion on 18 May for resolutions regarding the troubles in America; ibid., p.593, Parl.Hist., xvi, 1010-28.

120. Almon, Parl.Register, xiv, 391. For the debate, see pp.383-396; L.J., xxxv, 770.

121. Burke Corr., iv, 91-2; L.J., xxxv, 804.

but were most constant between January and March, the months that coincided with the London season. On 3 February 1784, the Earl of Effingham gave notice of a motion he wished to make and moved that the Lords be summoned for the next day. He agreed with his opponents, who opposed such a short notice, that 'the question he alluded to required a full House, and he thought, at this season of the year, there was very little need of apprehending a full one, at even a day's notice'.[122]

Crowded houses usually occurred only on occasions of political crisis and on matters of intrinsic importance to the lords themselves. 94 peers were present on 28 February 1719 when the Duke of Somerset proposed a Committee of the Whole House to consider the state of the peerage. This figure rose to 119 when the matter was discussed by the House on 2, 3, and 4 March. The draft Peerage Bill was presented by the judges on 14 March 1719 and immediately given a first reading. The Journals record that 93 peers attended that day, and 102 at the second reading two days later. There was but one less at the Committee of the Whole House on 18 March, and the same number attended a month later on 14 April 1719 for the third reading, when the Bill was suddenly withdrawn.[123] The controversy which arose over the Scottish peers' petition in February 1735 drew even higher attendances; the Journals record 139, 135, 139, 104, and 137 peers present on 13, 20, 21, 27 and 28 February, respectively.[124] After the failure of Walpole's excise proposals in the House of Commons, the Opposition continued its campaign against the Minister

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122. Debrett, Parl.Register (2nd.ser.), xiv, 113-4. See supra, pp.232-3. 130 peers were present on 4 February compared to 33 on the third, L.J., xxxvii, 36,37.

123. Ibid., xxi, 81,83-4,86,87,100,101,104,129-30; Torbuck, Debates, vii, 113.

124. L.J., xxiv, 458,464,465-6,471,473-4; H.M.C. Carlisle MSS., p.152.

in the House of Lords. 74 peers were present on 3 May 1733 when the Opposition Lords proposed an inquiry into the sale of the estates of the South Sea Company directors. The first debate on the accounts on 24 May was attended by 105 peers, all of whom took part in the division. This figure fell to 98 on 29 May, but rose to 106 on 1 June.[125] The next assault on Walpole's Ministry took place over the issue of the Convention reached with Spain at El Pardo. 127 peers gathered for the first debate on 27 February and two more on 1 March 1739, when all 129 votes were cast in the division on the motion for an Address of Thanks to the Crown.[126] The final attack on the Ministry occurred on 13 February 1741 when a censure motion was made against Walpole proposing that he be removed from the King's Councils for ever. That day, the House of Lords was attended by 143 of its members.[127]

No indication of a trend towards higher attendances during the century can be distinguished. The preliminary debates to the American legislation of the Rockingham Ministry on 28 and 29 January and 3, 4, 6, 10 February 1766 attracted 132, 104, 127, 127, 117, and 130 members to the House, respectively.[128] The Declaratory and Stamp Act Repeal Bills, when debated in early March, retained the interest of members and the public alike, and consequently the numbers remained high. The peak on this occasion was reached on 11 March 1766 at the second reading of the Repeal Bill.[129] The second decade of George III's reign saw a full House in the Lords

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125. L.J., xxiv, 254 255 277-8,278-9;283-4,284;291,292. H.M.C. Egmont Diary, Diary, i, 380; H.M.C. Carlisle MSS., p.117. See also infra.,pp.274-6.
126. L.J., xxv, 304,305,307,309.
127. Ibid., pp.594-5,596-7; B.L.Add.MS.6043, f.72.
128. L.J., xxxi, 249-50,251,254-5,256,257-8,260.
129. The numbers were 114, 135, 126, 136, 98 and 115 on 5, 7, 10, 11, 13 and 17 March 1766. Ibid., pp.291,297,300,303,307,311.

on a variety of questions. The consideration of the Spanish papers relating to the Falkland Islands attracted 132 peers to the House on 14 February 1771, all but fifteen of whom took part in the division on the Address of Thanks.[130] The second reading and Committee stage of the Royal Marriages Bill on 28 February and 2 March 1772 attracted 125 and 127 peers, respectively.[131] After the debate on the State of the Nation inquiry on 2 February 1778, 125 peers out of a total of 128 who had been present that day participated in the division.[132]

Crowded houses were often an indication of close divisions, which could turn to the disadvantage of the government of the day. For most of the period 1714-84, the peak attendance was that set on 27 June and 1 July 1717 when a 'mighty appearance'[133] of 153 peers attended the trial of the Earl of Oxford in Westminster Hall, and ultimately contributed to the defeat of the Government and the acquittal of Oxford.[134] A mammoth effort of co-operation and unity by the Opposition brought them within three votes of victory against the Chatham Ministry on 26 May 1767 in a House of 128 peers.[135] Charles Fox's India Bill drew 132, 121, and 133 peers to the House of Lords on 15, 16, and 17 December 1783; only six of those present on the fifteenth did not vote in the division, which was carried by

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130. Ibid., xxxiii, 62-3,65. See supra., p.254 and n.63.
131. Ibid.,pp.268-9,270, 270-1,273.
132. Ibid., xxxv, 284,287.
133. J.Somerset to ? , 2 July 1717, Badminton House, Beaufort MSS., drawer 17, quoted in C.Jones, 'Seating Problems in the House of Lords in the early Eighteenth Century : the Evidence of the Manuscript Minutes, B.I.H.R.', li (1978) , p.135.
134. L.J., xx, 514-5,522.
135. Ibid., xxxi, 616.

69 votes to 57 in favour of adjourning consideration of the Bill, while two days later all but one peer present voted on the question to commit the Bill and resulted in the Government's second defeat by 75 votes to 57.[136] Ten months earlier, on 17 February 1783, Lord Shelburne's Government put before Parliament the preliminary articles of peace to end the American War. 141 are given as present that day, 124 of whom voted in the division, which the Ministry narrowly won by 69 votes to 55. This majority was reduced by one after a call for proxies.[137]

Contemporaries regarded the attendance of 17 February 1783 to have been the largest of George III's reign, to date.[138] But this figure too had been surpassed: 147 peers presented themselves in the Parliament Chamber on 2 February 1770 to once more debate the Middlesex election case and to eventually pass a resolution recognizing the Commons' jurisdiction over election issues.[139] However, it is a sorry reflection on the eighteenth century House of Lords that the highest attendances of the period did not occur on political issues at all. The attendance at Oxford's trial in 1717 remained unsurpassed until 16 April 1765, the first day of Lord Byron's trial, when 154 were present;[140] but 158 peers crowded into the House of Lords chamber on 15 April 1776 prior to the commencement of the Duchess of Kingston's trial, thus establishing a new record for the highest attendance of the period.[141]

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136. Ibid., xxxvii, 20,25-6,26-7. These division totals do not include the proxy votes, which did not alter the result.
137. Ibid., xxxvi, 597.
138. Debrett, Parl.Register (2nd.ser.), xi, 93.
139. L.J., xxxii, 415-6.
140. Ibid., xxxi, 126-7.
141. Ibid., xxxiv, 645.

Many questions of great future political import failed to attract a large audience. The American Stamp Duties Bill was considered in the House of Lords on 1, 4, 5, and 8 March 1765 on which days the Journals note 53, 53, 79, and 43 peers as present.[142] The Coercive Acts of 1774 came before the Lords on seventeen occasions between March and June. The highest attendance of 101 was recorded on 28 March for the second reading of the Boston Port Bill. Thereafter, the figures remained constantly below 65, except for 6 and 11 May when 72 and 87 members were present for the second and third readings of the Massachusetts Government Bill, and on 26 May when the third reading of the Quartering Bill was attended by 81 peers. The lowest attendance figure of 21 occurred on the first reading of the Boston Port Bill and the report stage of the Massachusetts Government Bill on 26 March and 10 May, respectively.[143]

Indifference towards the conduct of business in the Upper House meant that most issues, whatever their nature and subject, drew only a mediocre attendance of peers. Occasionally some scandalous affair might attract a higher audience than usual: the second reading of a divorce bill on 27 November 1724 'gave great diversion...to the House of Lords. The sick, the lame, and the blind attended it, and crawled out of doors to share in the entertainment'.[144] Hence, 78 peers were present on a day that otherwise included nothing but

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142. Ibid., xxxi, 57,59,62-3,67.

143. The House of Lords considered the five measures on 26, 28, 29, 30 March, and 2, 3, 6, 9, 10, 11, 12, 13, 16, 17, 18, 26 May and 17 June 1774 when there were 21,101, 65, 64, 42, 31, 72, 40, 21, 87, 55,60,46, 62, 69, 81, 41 peers present, respectively. Ibid., xxxiv, 95,96, 99,102,151,155,167,170,174,178,184,187-8,191-2,197,201,214-5,255.

144. H.M.C. Portland MSS., vii, 390.

routine matters.[145] A similar incident occurred in a very respectable House of 84 on 10 January 1744 when witnesses were examined at the Bar of the House in relation to the Duke of Beaufort's Divorce Bill. According to the Earl of Sandwich, 'the fact was very clearly and circumstantially proved, to the great entertainment of a very well filled bench of bishops, and a very numerous audience'.[146] On 15 November 1763, 131 peers attended the House of Lords to vote John Wilkes's Essay on Woman 'a most scandalous, obscene, and impious libel', and only nine fewer were present on 24 January 1764 when the House resolved that Wilkes was the author and ordered him to be taken into custody by Black Rod.[147]

The presence lists in the Lords Journals are adequate evidence of the erratic nature of attendance in the House of Lords, even on major political issues. An analysis of division lists further reveals that it was the opposition cause which suffered most as a consequence of such conduct. There is no great difference in the attendance patterns of the government and opposition sides in the Upper House, but the point is illustrated from the evidence for the following three instances, when Parliamentary success demanded sustained and consistent attendance over a number of days. On 24 May and 1 June 1733 the Walpole Administration faced two crucial divisions in the House of

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145. L.J., xxii, 359-60.

146. Bedford Corr., i, 18; L.J., xxvi, 286-7.

147. Ibid., xxx, 413,415-7,457-8,458-9. Compare this to the 120 peers present on 29 November 1763 when the Lords debated and agreed to the Commons' resolutions condemning No.45 of the North Briton and declaring that privilege of Parliament did not extend to libel. Ibid., pp.426-7.

Lords on questions concerning the South Sea Company inquiry.[148] 113 different peers attended the House between both days, 109 of whom took part in the divisions.[149] Of these, 64 voted on one or both occasions for Walpole, compared with 52 for the Opposition. The question on 24 May was decided in favour of the Opposition due to the practice of the House of resolving a tied vote in the negative, which the Opposition achieved because of their greater number of proxies: they held 27 compared to the Government's 18. Of the 105 peers present in the House (all of whom voted), 57 declared for Walpole's Government. This total remained the same on 1 June, though the composition of the pro-Walpole lobby had changed slightly. Government lost 7 votes in all, 5 by absenteeism, and 2 to Opposition.[150] This, however, was compensated for by 2 new votes from peers absent on 24 May, and by 5 gains from Opposition.[151] The Opposition's total of 48 on 24 May, however, was reduced on 1 June by one absentee, one abstention, and five losses to Government,[152] whereas there were but four gains: the two defectors from Government, and two new

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148. Sources: 24 May 1733:- B.L.Egerton MS.2543, f.410; London Magazine (1733), p.332; Timberland, History, iv, 147-8; H.M.C. Carlisle MSS., p.118. 1 June 1733:- Cholmondeley (Houghton) MSS., Correspondence No.1990; H.M.C. Carlisle MSS., pp.119-20.

149. The abstainers were four from the following: Dukes of Rutland and Kingston, Earls of Suffolk and Scarsdale, Lords Percy and Hobart.

150. The absentees were: the Bishops of Rochester and Chichester, Lords Harrington, Byron, and Walpole. The defectors were: the Duke of Ancaster and the Earl of Clarendon.

151. The new votes were those of the Earl of Sutherland and Lord Onslow. Those won from Opposition were the Dukes of St.Alban's and Manchester, the Earl of Harborough, Viscount Falmouth, and Earl Cornwallis.

152. The Opposition's losses were: Lord Masham (absent), Duke of Greenwich (i.e. Argyll, abstained), and the forementioned defectors to Government.

peers,[153] making a total of 45. The Opposition retained its majority of proxy votes, though this too had fallen to 25, while the Government's tally remained the same; but this sufficed to give Walpole a majority of 5 in the final voting figures. Of the 64 peers who voted pro-Walpole, 50 voted for the Minister in both divisions of 24 May and 1 June 1733, and 20 of this core of supporters can be definitely identified as having also voted for the Government on 3 May when the Opposition secured their first victory over Walpole in a division of 31 votes to 35 in favour of an inquiry into South Sea Company Affairs.[154] Opposition, on the other hand, had a core of 41 supporters who voted consistently against Walpole in the divisions of 24 May and 1 June, 30 of whom were also in the majority on 3 May 1733.[155]

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153. For the defectors to Opposition, see n.150. The new votes were two of the peers listed in n.149.

154. Sources for 3 May 1733:- London Magazine (1733), p.667. Timberland, History, iv, 138-9; Parl.Hist., ix, 106.
The Government's total of 31 on 3 May 1733 was composed of the 19 temporal peers and the Bishop of London (who were also present on 24 May and 1 June). 10 other bishops were also present on 3 May: Lincoln, who voted with Opposition; and of the remaining 9, 5 voted for Walpole, while 7 of the 9 were also present on 24 May and 1 June. The other 6 votes included Lords Harrington, Byron, and Walpole (voted for Government on 24 May, but were absent on 1 June), the Duke of Ancaster (pro-Government on 24 May, pro-Opposition 1 June), the Duke of Rutland and Lord Hobart, both of whom were absent on 24 May, and who either voted in Opposition or abstained on 1 June).

155. The remaining 5 Opposition votes on 3 May were: the Duke of St.Alban's and Viscount Falmouth (who though again voting with Opposition on 24 May, switched to Government on 1 June), as did Earl Cornwallis (according to the division list, though his name is omtted from the Journals for 1 June: cf. Cholmondeley (Houghton) MSS., Correspondence No.1990, and L.J., xxiv, 291), the Earl of Warrington (absent on 24 May and 1 June), and the Earl of Rothes (who is not named in the Journals for 3 May (L.J., xxiv, 254) but who did vote with Opposition on both latter occasions).

In May and June 1767, the Administration of the Earl of Chatham faced three close divisions in the House of Lords on questions arising from the American issue. All three occurred in Committees of the Whole House; those on 22 and 26 May concerned the Massachusetts Indemnity and Compensation Act, while that on 2 June related to Quebec.[156] 151 different peers were present between the three sittings of the House, of whom 78 voted in the majority on one or more occasions and 71 with Opposition in the minority. Four peers included in these numbers, however, changed sides during the course of the proceedings,[157] so that 145 individuals voted in all. This leaves six peers who, though present in the debates, did not participate in the divisions.[158] The Government commenced the battle with 62 votes on 22 May. Between then and the next division, they lost one vote to Opposition and a further three votes by absenteeism.[159] Their majority on 26 May was secured by 8 peers who had been absent on the previous occasion;[160] there were no gains from Opposition. Furthermore, although Administration thus had 66 supporters present on 26 May, the Duke of Argyll and Lord Digby both only took part in one of the two divisions that day (Argyll in the first, Digby in the second), giving Government a total of 65 votes in both divisions.

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156. Sources: 22 May 1767:- B.L.Add.MS.33037, ff.17-20.
26 May 1767:- ibid., ff.51-4; 2 June 1767:- ibid, ff.73,77-8.

157. Those who changed sides on the various divisions were: the Earls of Cholmondeley, Abercorn, and Harrington, and Lord Ravensworth.

158. The six abstentions were by the Archbishop of Canterbury, the Bishop of London, the Duke of York, Earls Poulett, Sussex, and Ker.

159. The defector was the Earl of Abercorn; the absentees were the Bishop of Rochester, Lord Le Despenser, and Lord Godolphin.

160. Bishop of Winchester, Duke of Chandos, Earls of Exeter, De La Warr, Lords Dacre, Montfort, Boston, and the Earl of Westmorland.

The Opposition also increased their total, from 56 on 22 May to 62 four days later. They lost four votes by absenteeism,[161] but gained 9 new votes from previous absentees,[162] in addition to the Government's defector. The greater constancy of the Government's supporters was convincingly demonstrated in the third division. On 2 June 1767, Administration lost a further 4 votes from their total of 26 May: 3 by absenteeism, and one other defector to Opposition.[163] Their voting power, however, was strengthened by the return of two peers who had been present on 22 May but were absent four days later,[164] and by 6 peers who attended for the first time on 2 June.[165] Furthermore, on this occasion they made two positive gains from Opposition[166] as well as recovering the original defector of 26 May, giving them their highest total in the battle,of 73 votes. The division of 2 June, on the other hand, revealed the Opposition's weakness. They lost 8 peers from their total of 62 supporters on 26 May: 4 by absenteeism, two defected to Government, and two abstained.[167] Their gains included one

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161. Bishop of Oxford, Earl of Scarbrough, Earl of Cholmondeley, Lord Monson.

162. Bishops of Ely and Salisbury, Earls of Pembroke, Winchilsea, Thanet, Coventry, Halifax, Berkeley, and Lord Scarsdale.

163. The absentees were the Duke of Northumberland, the Earl of Westmorland, and Lord Delamer. The new defector from Government was Lord Ravensworth.

164. Bishop of Rochester, Lord Le Despenser.

165. Duke of Beaufort, Earl of Oxford, Viscount Townshend, and Lords Audley, Romney, and Bruce.

166. Earls Cholmondeley and Harrington.

167. Bishop of Gloucester, Lord Mansfield, Earls of Coventry and Halifax (absentees), Earls of Abercorn and Harrington (to Government). Earl of Berkeley, and Viscount Dudley (abstained).

previous Government supporter, two peers who returned after being absent on 26 May, and four new peers who had been absent on both previous days;[168] their total on 2 June was 61 votes. Despite the Government's greater number of gains compared with that of Opposition, their success in staving off defeat was due to the constancy of a nucleus of 55 peers who attended the House on all three days and voted in the majority on each occasion.[169] They were backed by 12 peers who voted for Government on the two days that they were present, and by 8 peers who attended on one day only. Both the defectors from Government were also present on all three days, each voting twice with Administration. Opposition, on the other hand, relied on the core support of 48 peers, who were supplemented by 10 peers present on two days, one who abstained at the third division, though present on the three days,[170] and a further 7 peers present on one day only. Of the three peers who originally voted in the minority but turned pro-Government or abstained, only the Earl of Harrington was present on all three occasions, while the remaining two attended on only one other day.

The same pattern is again demonstrated by the divisions of 15 and 17 December 1783 when the official Opposition who, however, enjoyed the support of the Crown, twice defeated the Government's India Bill.[171] 76 different peers voted in the majority (that is,

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168. Those present on 22 May and 2 June were the Earl of Scarbrough and Lord Monson. The four new votes were from the Bishop of Bristol, the Earl of Breadalbane, Lord Byron, and Lord Chedworth.

169. This includes the Earl of Ashburnham, who is omitted from the presence list of 2 June, L.J., xxxi, 626.

170. Ibid., the Earl of Powis.

171. Source: Debrett, Parl.Register (2nd.ser.), xiv, 107-8.

against the Ministers) between both occasions, and 61 in the minority. This includes two peers who changed sides in the intervening period, so that 135 peers voted in all. One other peer present on 15 December but who took no part in the division and was absent on the next two days,[172] completes the full number of peers present over the three days, which was 136. In the period between the two divisions, the Ministers, who told 57 on 15 December, lost two votes to the Opposition,[173] one vote by absenteeism on 17 December, and one abstention.[174] They gained, however, three votes from peers who were absent on 15 December,[175] plus the vote of a lord who had abstained at the first division;[176] so that their final tally remained the same. The majority, or Opposition, lost only one vote by absenteeism, which was compensated for by the vote of a peer absent on the first day;[177] a further 4 votes came from peers who had abstained at the first division,[178] and they also made two gains from the minority. This increased the Opposition's tally from 69 votes on 15 December to 75 votes two days later. Of the 76 different

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172. Lord Digby. The Bill was considered by the House on 15, 16, and 17 December 1783.

173. Viscount Stormont (Lord President), and Earl of Mansfield.

174. Earl of Egremont (absent), Prince of Wales (abstained).

175. Viscount Montagu, Lord Stawell, Lord Bagot. The latter appears in the division list of 15 December as having voted in person and by proxy. His name is omitted from the Lords Journals for that day, though given as present on 16 and 17 December. L.J., xxxvii, 20,25-6,26-7.

176. Earl of Huntingdon or Earl of Hertford.

177. Bishop of Rochester, and Lord Milton, respectively.

178. Duke of Ancaster, Earl of Abercorn, Viscount Howe, Lord Grosvenor.

peers who voted in the majority, a nucleus of 68 remained constant to Opposition in both divisions, 66 of whom were present on all three days, while the remaining two peers were present on 16 December plus one of the days on which a division was held. The Ministers and their supporters who formed the minority on this occasion had a core vote of 53 peers in both divisions,[179] 46 of whom were present on the three days of the proceedings, and the remaining seven attended on the days of the divisions only.

The most superficial comparison of division figures with attendance figures reveals that not all those who attended the proceedings of the House stayed to see the conclusion of all business. Fatigue, disinterest or boredom, and simple uncertainty as to how to vote, are all reflected in the frequent disparity between the two sets of figures. On 11 March 1779, the House of Lords was put into Committee to consider papers regarding the management of the Hospital at Greenwich. After some debate, it was observed that 'the Committee being now very thin, it was agreed to move for the papers the next day, in a full House, to which time the Committee and the House adjourned'.[180] It seems appropriate to pose the unanswerable question: how many other sittings of the House were brought to a premature conclusion, and how much business left undone at the end of the day,due to an inadequate attendance of the Lords ?

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179. This includes either Huntingdon or Hertford.
180. Almon, Parl.Register, xiv, 166.

VIII

THE SEATING OF THE HOUSE

Peers of the realm sat in the Upper Chamber of Parliament by virtue of their writs of summons, and not according to the letters patent by which their peerages were created. A writ of summons could be obtained by petitioning either the Sovereign or the Lord Chancellor.[1] The writ, however, fell void if a peer then failed to present himself at the House,[2] though this would not have taken effect until the dissolution of a Parliament. Lord Strafford, in a letter to the Earl of Oxford from The Hague on 4 May 1714, discussed the controversy arising from George of Hanover's claim for a writ of summons as Duke of Cambridge, and he maintained that it had been the practice of several Lord Chancellors to keep his writ on his behalf during his long absences abroad, but on his return to England the summons would be sent to him immediately upon demand, as 'they are obliged to do by law'.[3]

A dignified ceremony of introduction in the House of Lords awaited all peers who had been bestowed with peerages of a new creation,[4] and those who claimed their titles by 'special limitation

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1. Supra, p.125.
2. MS. Murray 635; Notes on the Duke of Dover's case [1719].
3. B.L.Add.MS.40621, f.221. Thomas Wentworth was created Earl of Strafford on 23 June 1711, and was Ambassador Extraordinary and Plenipotentiary at The Hague between 1711 and 1714. The Earldom of Oxford was conferred upon Robert Harley on 23 May 1711, and three days later he was appointed Lord High Treasurer, a post he held until his dismissal on 27 July 1714.
4. E.g., L.J., xxii, 242(1724); xxiv, 321(1734); xxviii, 262(1754).

in remainder'.[5] Peers who inherited their dignities took their seats in the House without any ceremony:[6] they simply presented their writs of summons and swore the oaths before taking their places on the appropriate benches.[7] Those entitled to the full ceremony of introduction suffered one penalty as a result; they had to pay fees to the officials of the House who were involved in the procedure, and the total amount paid depended on the peer's rank in the peerage.[8]

The proper time for new peers to be introduced was after Prayers, before the House proceeded to business,[9] though this was not always followed; peers were introduced at a convenient point during the House's proceedings or at the end of the day, before the adjournment.[10] The ceremony of introduction dates from 1621.[11] The Lord Chancellor first acquainted the House that one or several peers attended outside, ready to be introduced.[12] The peer's procession then entered the

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5. Standing Order No.89 (28 June 1715), e.g. L.J., xxxi, 163(1719); xxxv, 6(1776).
6. Standing Order No.88 (27 July 1663).
7. E.g., Lord Le Despenser on 18 April 1763; L.J., xxx, 403. The Barony of Le Despenser had fallen into abeyance with the death of the seventh Earl of Westmorland on 26 August 1762. There were two coheirs: Sir Francis Dashwood, Bart., and Sir Thomas Stapleton, Bart., the succession being decided in favour of the former. Complete Peerage, iv, 284-5. See also e.g., L.J., xxxii, 174(1768).
8. Ibid., xxii, 627-8. These fees did not have to be paid by peers who inherited an initial or higher dignity, nor by bishops upon their translation, unless to an archbishopric or to the sees of London, Durham, and Winchester. No further revision of the fees charged has been found in the Journals after 1725. For a table of the fees to be paid, see infra, p.284.
9. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.2. Standing Order No.92 (19 March 1679).
10. E.g., L.J., xxv, 10(1736); xxvi, 104(1742); xxx, 29(1760), 125(1761); xxvii, 134(1747).
11. A.Wagner and J.Sainty, 'The Origin of the Introduction of Peers in the House of Lords', Archaeologia, ci(1967), p.120.
12. E.g., L.J., xxi, 597.

	Arch-bishop	Duke	Marquess	Earl	Viscount	Bishops of London, Durham, Winchester	Bishops	Baron
	£ .. s .. d	£ .. s .. d	£ .. s .. d	£ .. s .. d	£ .. s .. d	£ .. s .. d	£ .. s .. d	£ .. s .. d
Black Rod	10 .. 0 .. 0	10 .. 0 .. 0	6..13 .. 4	4..10 .. 0	4 .. 0 .. 0	4..10 .. 0	3 .. 0 .. 0	2..10 .. 0
Clerk of the Parliaments	10 .. 0 .. 0	10 .. 0 .. 0	6..13 .. 4	4..10 .. 0	4 .. 0 .. 0	4..10 .. 0	3 .. 0 .. 0	2..10 .. 0
Clerk Assistant	1..10 .. 0	1..10 .. 0	1 .. 5 .. 0	1 .. 0 .. 0	1 .. 0 .. 0	1 .. 0 .. 0	10 .. 0	10 .. 0
Yeoman Usher	1..10 .. 0	1..10 .. 0	1 .. 5 .. 0	1 .. 0 .. 0	1 .. 0 .. 0	1 .. 0 .. 0	10 .. 0	10 .. 0
Doorkeepers	4 .. 0 .. 0	4 .. 0 .. 0	3..10 .. 0	3 .. 0 .. 0	2 .. 0 .. 0	3 .. 0 .. 0	2 .. 0 .. 0	2 .. 0 .. 0

chamber, headed by the Gentleman Usher of the Black Rod and Garter King at Arms (or his deputy Clarencieux King) who carried the peer's patent of creation.[13] Behind them walked the two hereditary great officers of state, the Earl Marshall, and the Lord Great Chamberlain. If one or both of these lords were absent, other peers could officiate for them; if the Lord Great Chamberlain was then the senior of the pair, it was his prerogative to hold the place of precedence by walking on the right-hand side.[14] They were followed by the new peer, accompanied by his supporters or sponsors, these being two peers of his own rank. All wore full ceremonial robes and, with their heads uncovered, they approached the woolsacks, making due reverence to the Cloth of Estate. There the new peer knelt before the Lord Chancellor and presented his patent and writ of summons, which were read by the clerk at the Table. Having sworn the oaths of fidelity, supremacy, and abjuration, and declared against the doctrine of transubstantiation and signed the test roll, he would then be conducted to the part of the bench which befitted his rank.[15] The manner of taking the oaths was imposed by the

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13. After 1767, Garter King had also on these occasions to lay on the Table a copy of the peer's family pedigree. Standing Order No.129 (11 May 1767). See supra., pp.127-8.

14. H.L.R.O., Records of the Lord Great Chamberlain, Letters and Papers, i, MS.223,p.199.

15. E.g., L.J., xx, 555(1717); xxviii, 618,619(1756); xxxv, 5(1776). This composite description of the procedure is based on H.L.R.O., Records of the Lord Great Chamberlain, Letters and Papers, i, MS.223, p.199; B.L.Add.MS.6297, p.317; H.L.R.O., Historical Collection 59, John Relfe's Book of Orders, p.37.
A bishop was introduced by two fellow bishops and conducted to his seat on the episcopal bench but without any of the formalities of the ceremony for temporal peers. May, Parliamentary Treatise, p.135.

Acts of 30 Charles II, c.1 stat.2, and 13 and 14 William III, c.6,[16] namely, that they should be sworn at the Table before the peer took his seat. However, peers introduced during the first Parliamentary session of George I's reign followed the procedure observed in the previous reign; that is, they took their seats after the reading of the patent and summons and then returned to the Table to take the oaths.[17]

Customarily, the new peer would then be congratulated by friends and colleagues on his creation; but on 18 February 1742, when Sir Robert Walpole was introduced as Earl of Orford, Lord Bathurst observed 'not one lord to rise or take him by the hand (as always done on such occasions by friends or any who are not enemies and who are near a lord at his introduction). But after he had taken the oaths, he immediately retired without taking his seat, and drove to Richmond. He looked very pale in the House'.[18] Horace Walpole, the new Earl's son, also commented on the incident in a letter to Sir Horace Mann, and identified among the uncivil peers the Duke of Bedford and the Earls of Halifax and Berkshire.[19] However, the cool reception that Orford encountered within the House was totally eclipsed by the great warmth of public feeling expressed by the crowds as he took his leave through the Court of Requests.[20]

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16. Statutes of the Realm, v, 894-6, vii, 747-50.
17. E.g., L.J., xvii, 323(1702); xix, 166(1710), 245(1711), 457(1712); xx, 23-9, 76(1715).
18. H.M.C. Carlisle MSS., iii, 255; L.J., xxvi, 55-6.
19. Walpole, (Yale) Correspondence, xvii, 338.
20. H.M.C. Hastings MSS., iii, 34-5.

There were two occasions when variations of the basic ceremony of introduction would be followed. The task of communicating to the House the creation or promotion in the peerage of the Speaker of the Upper House fell to a senior government minister.[21] Immediately after the announcement, the Speaker left the woolsack and retired to the Bar of the House, and there put on the robes appropriate to his rank. The peer's procession entered the debating chamber in the usual manner. At the steps of the throne Garter King handed the patent to the Lord Chancellor, who then carried it to the Chair of Estate, making three obeisances as he walked up the steps, where he knelt and laid the patent on the Chair. After a brief pause he picked up the patent and delivered it to the herald who laid it on the Table.[22] The procedure thereafter was the same, except that having taken his seat with the peers of his own rank, a Lord Chancellor would be further conducted to the upper end of the earls' bench, usually reserved for the dukes; this was on account of his precedence as Chancellor.[23] If the House then continued with business, the Lord Chancellor would resume his place on the uppermost woolsack. For the occasion of his introduction as Lord King, Baron of Ockham, on 31 May 1725, Sir Peter King, the acting Speaker of the Lords, borrowed a baron's robes from Lord Hertford. Next day, King was appointed Lord Chancellor.[24]

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21. E.g., Lord President, L.J., xxii, 561(1725); xxiv, 321(1734); Lord Privy Seal, ibid., xxxiii, 41(1771); Secretary of State, ibid., xxi, 604(1721); xxviii, 262(1754); xxix, 627(1760); xxxv, 515(1778).

22. Harrowby MSS., document 21 (part III), 4 April, 1754; L.J., xxviii, 262-3.

23. See infra., p.290.

24. Lord King, The Life of John Locke, ii, appendix ii, 5; L.J., xxii, 561.

A small deviation from normal procedure would also occur when a Prince of the Blood was to be introduced to take his seat in Parliament. These occasions often coincided with the opening day of a new session of Parliament.[25] On such occasions, prayers would be said immediately on convening the House, which then adjourned to allow the peers to robe, and when it resumed the Prince would be introduced before the King arrived.[26] The ceremony was much the same as usual, except that a royal prince remained standing when he presented his patent to the Lord Chancellor.[27] The future King George III was introduced as Prince of Wales on 13 November 1759, sponsored by Earl Temple, the Lord Privy Seal, the Duke of Rutland who was Lord Steward, and the Duke of Devonshire, the Lord Chamberlain.[28] The young prince wrote an account of the procedure to his favourite, Lord Bute.[29]

> I am to be by two at the House, go and robe in the Keeper's Chamber, where the patent and writ are to be given to the L[or]d in Waiting who must carry them to the House. I must then deliver them to the Keeper, take my seat as Prince of Wales, then on the Commission being read sit on the woolsack among the rest of the Commissioners; after the lords are unrobed, take the oaths.

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25. This was the case for six of the eight occasions in the period 1714-84, and occurred without exception for the introduction of a Prince of Wales (L.J., xx, 21(1715), xxiii, 297(1729), xxix, 543 (1759), xxxvii, 3(1783); and also xxxi, 4(1765), 424(1766). The two exceptions were the Duke of Cumberland on 27 April 1742, and the Duke of York on 29 May 1760 (ibid., xxvi, 104; xxix, 675).
26. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.1. Normally, prayers would be said after the sovereign had left, e.g., L.J., xxiii, 162-3(1728), xxxiv, 266(1774).
27. E.g., ibid., xxxi, 4(1765), 424(1766).
28. Grenville Papers, i, 329; L.J., xxix, 543; The Devonshire Diary, p.28.
29. R.Sedgwick (ed.), Letters from George III to Lord Bute, p.33.

Here was another anomaly in the procedure: royal princes introduced on the first day of a session took the oaths when the House reconvened for business after the King had left; [30] those introduced at any other time followed the usual procedure and swore the oaths before being led to their seats. [31] The Prince of Wales's place was on the right of the throne, where a chair was provided for him; [32] the other princes were usually accommodated on the upper part of the earls' bench. [33] However, in 1742 and 1760, special arrangements were made for the Dukes of Cumberland and York, the son and grandson, respectively, of George II, for whom chairs were provided on the left of the throne. [34]

At the commencement of every session of Parliament, marshalled lists of all the peers of the realm were laid on the Table of the House by Garter King at Arms, the officer to whom all matters concerning the precedence of peers were usually referred. [35] The Garter's Rolls gave the Christian and family names of peers, their titles, and any great offices of state they held. The Christian names were omitted for those whose succession was disputed, for minors (that is, peers under the age of twenty-one) [36], and any others who for some reason or another had not, together with the first two groups, been issued with writs of summons and were not, therefore, entitled to take their seats in the House of Lords. These lists

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30. E.g., L.J., xx, 22(1715); xxxi, 5(1765); xxxvii, 4(1783).
31. E.g., ibid., xxvi, 104(1742), xxix, 675(1760).
32. E.g., ibid., xxiii, 298(1729), xxix, 544(1759).
33. E.g., ibid., xxxi, 4(1765), 424(1766).
34. Ibid., xxvi, 104(1742), xxix, 675(1760).
35. H.L.R.O. Historical Collection 59, John Relfe's Book of Orders, p.34.
36. Standing Order No.93 (22 May 1685).

were the main guide for placing a peer in his appropriate place when he came to take his seat in Parliament. A peer's precedence in the House was decided by the date of his letters patent; hence, the Duke of Wharton, when introduced on 21 December 1719, was placed higher in seniority to the Duke of Manchester, introduced the previous month, because his patent was dated from 28 January 1718, whereas Manchester was created a duke on 28 April 1719. [37]

The seating arrangements of the House of Lords were imposed by an Act of Parliament, 31 Henry VIII, c.10. [38] According to the statute of 1539, the placing of the Lords was as follows: on the right-hand side of the chamber, as viewed from the throne, sat the ecclesiastical members, first the two primates with the Archbishop of Canterbury being nearer the throne, then the bishops with precedence given to the Bishops of London, Durham, and Winchester, while the remainder sat according to the order in which they had been consecrated to their first sees. The seating of the lay peers was slightly more complex, though in broad terms they were to sit in order of precedence on the left of the House. Highest and next to the throne sat the Princes of the Blood; next the principal great officers of state, these being the Lord Chancellor, the Lord Treasurer, the Lord President, and the Lord Privy Seal, who sat above all other peers even if of a lower rank in the peerage themselves. These were followed by the second category of great officers, namely the

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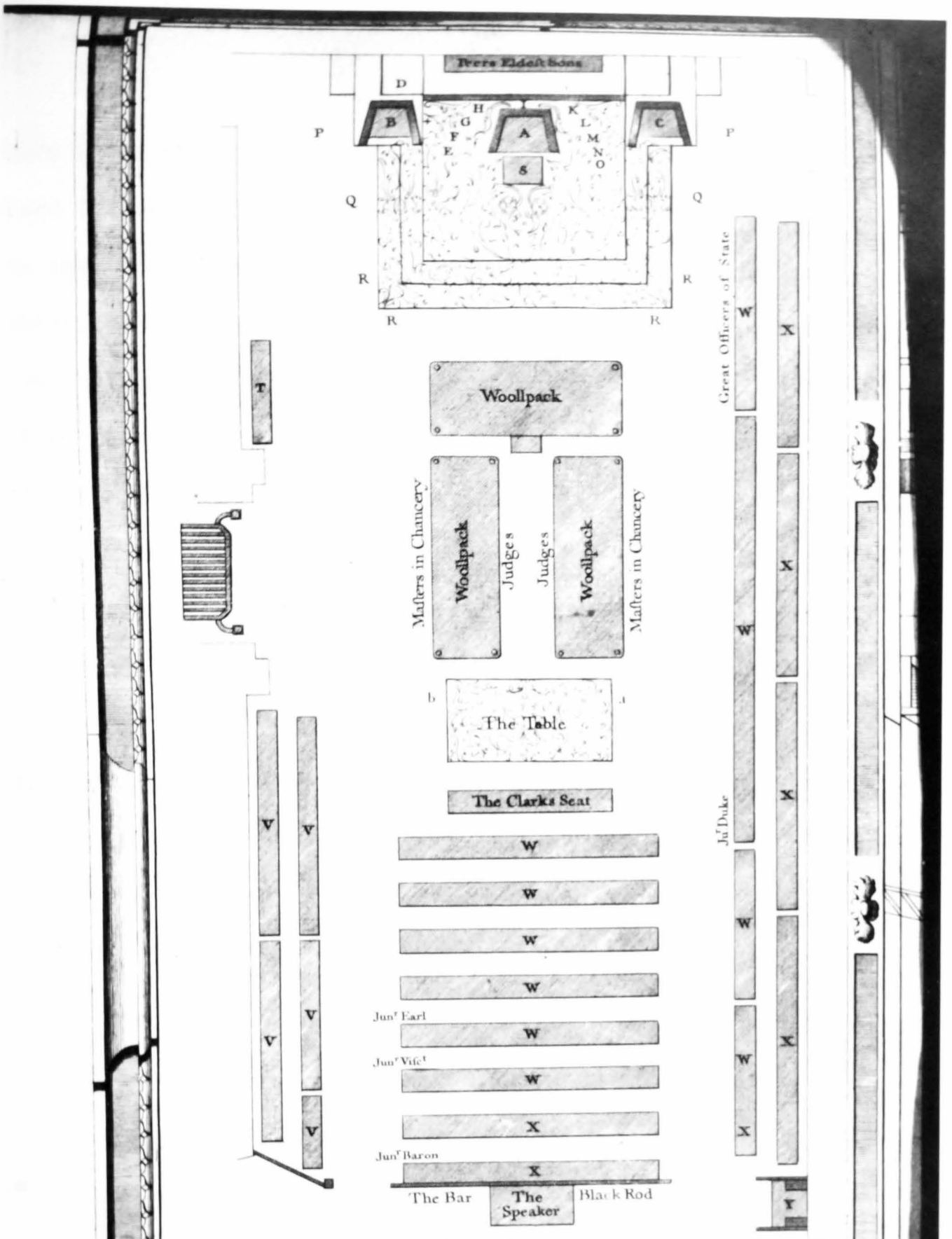
37. L.J., xxi, 163,186. This was in spite of Manchester's writ of summons bearing an earlier date than Wharton's.

38. Statutes of the Realm, iii, 729-30; H.L.R.O., Historical Collection 59, John Relfe's Book of Orders, p.33; Standing Order No.1 (1621).



The Commons

A *The King*
B *The Prince of Wales*
C *The Duke*
D *L^d Chancellor*
E *Cap of Estate* *
F *Master of the Horse*
G *L^d of y^e Bed Chamber*
H *Capt of the Band of Pensioners*
I *Master of the Robes*
K *Capt of the Guard*
L *Capt of y^e Yeomen of the Guard*
M *Earl Marshal*
N *Sword of State*
O *L^d Gr Chamberlain of England*
P *Officers of the Prince & Duke*
Q *Kings of Arms Heralds and Pursuivants*
R *Serjants of y^e Mace*
S *The Kings Foot Stool*
T *Arch Bishops Bench*
V *Bishops Bench*
W *Earls Bench*
X *Barons Bench*
Y *Black Rod Seat*
a *Clark of y^e Crown reads the Titles of the Bills*
b *Clark of the Parliaments pronounces y^e Royal Assents to Bills*

* *or Cap of Maintenance or Cap Royal*

\+ *Lord of the Bed Chamber to the Prince holding his Coronet*

A PLAN of the HOUSE of PEERS.

A Scale of 3 Feet to an Inch

Lord Great Chamberlain, the Earl Marshall, the Lord Admiral, the Lord Steward, and the Lord Chamberlain of the Household. Finally, in the order of the creation of their peerages, sat the remaining dukes, marquesses, earls, viscounts, and barons. The Act allowed two exceptions to the general scheme. If a baron was appointed chief secretary to the King he was to take precedence over others of the same rank.[39] The Act of 1539 also provided that, in the event of a commoner being appointed to one of the great offices of state, he, not having a right to vote, should 'sit and be placed at the uppermost part of the sacks in the midst of the said Parliament Chamber'.[40] Long before the eighteenth century, the uppermost woolsack had become the acknowledged position of the Speaker of the House during its proceedings, a role fulfilled by the Lord Chancellor or, if a commoner, by the Lord Keeper of the Great Seal.

The evidence for the period 1714-84, however, strongly suggests that various irregularities had crept into the seating practices of the Lords which blatantly transgressed the terms and directions of the Act of Parliament and the Standing Orders of the House. The

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39. E.g., Lord Carteret, Northern Secretary, L.J., xxi, 456(1721), Southern Secretary, xxvi, 214(1743); Lord Harwich, American Secretary, ibid., xxxii, 237(1769); Lord Wycombe, Southern Secretary, ibid., xxxi, 435(1766). This practice appears to have lapsed with the change in the nomenclature of the Secretaries of State at the installation of the second Rockingham Ministry. Wycombe, who was appointed Home Secretary in March 1782, was not given the place of precedence at the head of the barons' bench; nor was the convention revived for his successors at the Home Office or the Foreign Office. E.g., L.J., xxxvi, 428(April 1782); Lord Grantham (Foreign Secretary), xxxvi, 572(1782), Lord Sydney (Home Secretary), and Lord Osborne (Foreign Secretary), xxxvii, 30(1783).

40. Statutes of the Realm, iii, 729-30.

situation was highlighted on 10 February 1741, the day appointed for resuming the debate on a motion to address the Crown for papers concerning the Convention signed by Britain and Spain at El Pardo in 1739. Before a word was uttered on the motion, the House of Lords collapsed into a state of confusion and disorder when it was insisted upon that 'the lords should take their due places in the House'.[41] This was intended as an Opposition tactic to obstruct Government business, but the ensuing debate also revealed the extent of the seaing problem in the House. The Earl of Warwick asked: 'Which is the earls' bench?'; the Duke of Bedford remarked profoundly, 'It is nonsense that lords should take their places without knowing them', which was confirmed by the Earl of Sandwich's despairing comment, 'I know not where to sit'.[42]

The problem was partly due to the inadequate size of the Parliament Chamber. The debating floor of the House extended from the south wall to the Bar of the House, a distance of 53 feet.[43] Along the west wall, between the door (leading to the Prince's Chamber) on the left of the throne and the Bar, a distance of 48 feet, were arranged two rows of benches. Each row was 45 feet long and contained four benches of various lengths. The front row was known as the earls' bench and, officially, reserved for those of the rank of earl and above; the second row was for the barons. Allowing 18 inches of room for each peer, these benches could accommodate 60 peers. Opposite them, along the east wall and

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41. L.J., xxv, 593.
42. B.L.Add.MS.6043, ff.68-70.
43. These dimensions are based on Gough Maps 23, f.52.

nearest the throne, was a single bench of about 5 feet long, to seat the two archbishops; a fire-place separated this from the two rows of bishops' benches, made up of two forms in the back row and three of unequal length in the front row, and which provided about 40 feet of seating space in all. Between the clerks' bench and the Bar were arranged eight cross-benches,[44] each 12½ feet in length. Known officially as the viscounts' bench they also accommodated the surplus members who had failed to find seats on the earls' and barons' benches. The cross-benches provided seating space for a further 64 peers, thus giving the White Chamber a seating capacity of 152 .

At no time during the period 1714-84, however, would it have been possible to accommodate the total membership of the House, and this was the basic obstacle to enforcing the arrangements laid down by the Act of 1539. This situation was explicitly acknowledged by the Duke of Newcastle in debate on 10 February 1741:[45]

> When this Act was made, there was room and no lord needed to sit upon the woolsack. Since the House was not large enough the great officers have always sat upon it....Are lords to alter their places every day, or leave vacancies? Then there will be $^{1}/_{4}$th of the peers will not have places.

A seating capacity of about 150 would have been adequate to accommodate the attendance at the House on most days; but contemporary

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44. An extra cross-bench was added to the original seven in 1741. See infra., pp.295-6.

45. B.L.Add.MS.6043, ff.68,69.

evidence shows that peers found the conditions within the debating chamber too cramped for comfort, so that an attendance of a hundred or so members was regarded as a full House.[46] This corresponds with the attendance figures throughout the period on occasions such as the opening day of a new session, when the peers present were obliged to sit in correct order due to the presence of the monarch.[47]

The problem of determining the proper places of peers in the House was exacerbated by a fundamental failure in the 1539 statute. The Duke of Newcastle explained the difficulty in the debate on 10 February 1741: 'This Act doth not direct how the lords shall be called. The custom hath been to call first the lords at the bottom of the House, who must go first in occasions of any solemnity, and

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46. A 'very full' House of 89 peers attended on 10 February 1720 when the Lords reversed the interlocutory sentence of the Lords of Session in Scotland, thus enabling the Commissioners for Forfeited Estates to take possession of the Seaforth inheritance (S.R.O., G D 124/15/1197/11; L.J., xxi, 226-7). This cause was the only business of the day. 127 peers composed a 'full house' on 24 January 1727 for the consideration of the King's Speech (Torbuck, Debates, ix, 241; L.J., xxiii, 14-15,16-18). Lord Ravensworth's unsuccessful motions on 7 March 1763 for the production of war accounts were debated in a 'very full' House of 119 peers (B.L.Add.MS.35352, f.316; L.J., xxx, 344,346). George III was quick to see the significance of the small majority of 14 by which the Lords approved the peace articles on 17 February 1783, especially in 'so full a House' of 141 members (Fortescue, Corr.George III, vi, 243; L.J., xxxvi, 597, 598-9). The consistently high attendances during the Lords' proceedings on the East India Bill on 15, 16, and 17 December 1783 caused Lord Camden to comment that 'the House [was] the whole time as full as the theatre upon Siddons' benefit'. The reference is to the actress Sarah Siddons. Pratt Papers, U 840/C 173/86. L.J., xxxvii, 20,25-6,26-7; Dictionary of National Biography, lii, 195-202. See supra., pp.269-71.

47. E.g., 105 peers were present on 8 December 1720 (L.J., xxi, 369), 103 on 27 November 1744 (ibid., xxvi, 406), 114 on 18 November 1760 (ibid., xxx, 9), 103 on 13 November 1770 (ibid., xxxiii, 3), and 94 on 1 November 1780 (ibid., xxxvi, 1780); Kielmansegge, Journey to England, pp.137-40; Gough Maps 23, f.53. See also supra., post (iv), Preface.

if the junior lords are placed first nobody can tell where the place of the first [most senior] may be'.[48] The Duke of Bedford replied with the suggestion that the procedure be reversed. He argued that since 'The place of the first lords is determined, therefore, you must begin with them: else the D[uke] of Cumberland may be placed where the clerks are'.[49] The limited space within the Parliament Chamber meant that it was impracticable to allocate each peer a seat which would be reserved specially for him.[50] On days of particularly high attendances, many earls would be forced to find seats on the cross-benches where, technically, they would be worse placed than the barons who sat at the upper or throne end of their bench. When a motion that the lords take their due places was enforced on 20 January 1741, Thomas Secker, Bishop of Oxford, observed that the 'earls' bench being filled with dukes as far as the cross-bench', a brief discussion arose on the principle whether senior members of the peerage ought to be placed in the inferior positions on the cross-benches, which nevertheless was the arrangement adopted by the House.[51] The total number of peers present that day was 118; 17 of whom were dukes.[52] The incident, however, forced the Lords to take a decision and establish some permanency to the seating order of the House, especially when, two days later, the situation was repeated, 19 dukes being present. On 22 January 1741, the normal order of business in the House was interrupted and

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48. B.L.Add.MS.6043, f.68.
49. Ibid., f.69.
50. See supra., p.293.
51. B.L.Add.MS.6043, f.53.
52. L.J., xxv, 572.

prevented from being continued until it was agreed 'that the end of the lowest cross-bench, next the bishops' bench, is the place of the junior baron',[53] and on 28 January the order of the provision of an extra cross-bench was made by the House.[54]

By the eighteenth century, therefore, the defects of the Statute of 1539 had become apparent, and hence the Act, the original purpose of which had been to ensure that 'magnates, knowing their places, might avoid contention in the future',[55] itself became a cause of dispute and confusion. During the seventeenth century, the Lords adopted various Standing Orders relating to seating within the House in an attempt to regularise its proceedings and buttress the terms of the Act of Henry VIII's reign. One of the original Standing Orders of 1621 urged the lords to 'keep their dignity and order in sitting as much as may be' and not to leave their places without just cause.[56] During the debate of 10 December 1719, on the Duke of Dover's request for a writ of summons, Lord Stanhope, the head of the Ministry, received a letter from the French Regent. This item of correspondence caused considerable excitement in the House, and 'so many lords came about him on this occasion to hear, that my Lord Cowper moved that the House might adjourn during pleasure that all the lords might know this great news'.[57] A resolution of 20 July 1661 which, however, was not

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53. Ibid., p.575.
54. Ibid., p.577.
55. Ibid., i, 105.
56. Standing Order No.13 (1621).
57. Cheshire R.O., Cholmondeley MS. DCH/x/8: Newburgh to Cholmondeley 10 December [1719], quoted in C.Jones, 'Seating Problems in the House of Lords in the Early Eighteenth Century : the Evidence of the Manuscript Minutes', B.I.H.R., li,(1978) 138; L.J., xxi, 174.

later incorporated in the Roll of Standing Orders, stipulated that peers were to address the House from their places, a recalcitrant lord facing the dishonour of being 'call[ed] upon' by the Speaker of the House to return to his place.[58]

The comparative regularity with which the House of Lords reaffirmed its orders on seating suggests that the correct procedure was known by the House as a whole. The evidence, however, points to the fact that the violation of these rules was the accepted common practice. The debate on 10 February 1741 highlighted several of the favourite infringements of the lords. According to the Duke of Newcastle, it had become customary by this date that the great officers of state sat on the woolsacks along with the Lord Chancellor,[59] while the Earl of Abingdon referred to the occasion when the proceedings of the House were stopped because Lord Lincoln was sitting on the woolsack.[60] By 1779, it appears that this privilege had been extended to members of the House who also held office in the royal household.[61] But the woolsacks were not the only places considered by peers as alternatives to their own benches; some also wandered onto the bench reserved for the clerks, while others favoured the bishops' benches. In the last decade of the seventeenth century, the Lords repeatedly forbad such irregularities in the seating order of the House.[62]

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58. Ibid., xi, 316; H.L.R.O., Historical Collection 59, John Relfe's Book of Orders, p.34.
59. Supra., p.293.
60. B.L.Add.MS.6043, f.69. This incident occurred in 1692. For an account, see H.M.C. House of Lords MSS., iv, 24, and L.J., xv, 81.
61. Almon, Parl.Register, xiv, 232; supra., p.41, n.32.
62. L.J., xv, 122, 347,461.

Without question, however, the best seats in the House were considered to be those situated near the fire, and in the debate of 10 February 1741, Lord De La Warr requested a concession for the Earl of Wilmington on grounds of past precedents. He maintained, 'When a lord has been sick, he has been indulged to sit by the fire. Indulge the Lord President now'.[63] Early in the next session of Parliament, during the debate on the Address in reply to the King's Speech, 4 December 1741, Horace Walpole observed that the Duke of Grafton, the Lord Chamberlain, 'sat out of his place' at the upper end of the earls' bench. The reason given was his Grace's illness, and the implication must be that Grafton, too, had received the indulgence of the House to sit near the fire.[64] Not surprisingly, these favoured places were eagerly sought after by others also, both by members and non-members of the House. In 1707, Lord Bradford moved that 'the sons of English peers...should always keep in their proper place, behind the throne, and not come to crowd the elder lords from the fire'.[65]

In 1626 the House of Lords had also made an effort to regularise the manner of sitting in Committees of the Whole House, the proceedings of which were usually less formal than those of the full House. Standing Order number 29, therefore, ordered that on such occasions, 'Every lord is to sit in his due place'.[66] But the evidence shows that eventually this rule, too, came to be overlooked. In the

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63. B.L.Add.MS.6043, f.68. The Earl of Wilmington was Lord President from December 1730 to February 1742.

64. Walpole, (Yale) Correspondence, xvii, 230-1.

65. Bodleian Library, MS. Ballard 36, f.183: J.Grandorge to A.Charlett, 5 April 1707, quoted in Jones, 'Seating Problems in the House of Lords in the early Eighteenth Century : the Evidence of the Manuscript Minutes', B.I.H.R., li, (1978), 136 n.23.

66. Standing Order No.29 (9 May 1626).

Committee on the Contractors Bill, 6 May 1782, a heated dispute arose in particular between Lord Chancellor Thurlow and Lord Grantley, relating to the Parliamentary rules on retrospective amendments. No agreement was reached until 'most of the noble disputants assembled round the Table' for closer debate.[67] The same irregularity could happen at any time: immediately after Prayers on 19 December 1781, the Order of the Day for the third reading of the Land and Malt Bills was moved, but 'previous to which the Marquess of Rockingham intimated something to the woolsack, which was conveyed to the several noble lords about the Table, at that time about nine in number '.[68]

Despite the very clear examples of deliberate infringements of the seating orders of the House of Lords, it is also apparent that, to a considerable extent, the terms of the 1539 Act, if loosely defined, were being observed. In the debate on the American Congress's petition to the King, 7 November 1775, Earl Gower referred to the Duke of Grafton as 'the noble Duke near the woolsack' and thus indicated his position on the upper end of the earls' bench, a place which Grafton was entitled to hold because of his senior rank in the peerage, and also due to his office as Lord Privy Seal.[69] When the Lords were put into a Committee of the Whole House on 2 May 1738 to consider the petitions against Spanish depredations on British subjects

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67. Debrett, Parl.Register (2nd.ser.), viii, 288. Lord Grantley was formerly known as Sir Fletcher Norton, ex-Speaker of the House of Commons, and considered himself an expert on Parliamentary procedure.

68. Ibid., p.50.

69. Almon, Parl.Register, v, 48; L.J., xxxiv, 499-500.Shortly afterwards, Grafton, who had spoken against Government policy over America earlier in the session, was replaced by the Earl of Dartmouth.

in America, Lord Chancellor Hardwicke retired from the woolsack and took his seat at the head of the earls' bench.[70] There would, therefore, have been a fair distance between him and Lord Carteret, whether the latter was seated at the lower end of the barons' bench in the row behind that of the Lord Chancellor's seat, or on the cross-benches, which would explain why Hardwicke misunderstood Carteret's proposed amendment to the motion before the House.[71] The Duke of Bedford, ill with gout, made a considerable effort to attend the Lords' debate on the second reading of the Bill for the Repeal of the Stamp Act on 11 March 1766; yet when the Earl of Bute came to inquire about his health, the Duke's embarrassment at acknowledging the acquaintance in public was acute and apparent to all.[72] Lord Bute, in quitting his seat and moving 'from the last bench to the first' where Bedford sat, would undoubtedly have attracted the attention of the whole House. The evidence, however, is not clear as to whether Bute was seated on the lowest cross-bench appointed for the earls[73] or on the lowest one of all, due to the very high turn-out of earls that day. Bute's precedence in the peerage officially ought to have secured him a higher placing than several others of the same rank. Nor is there any evidence that the Scottish earls had lower precedence than their English counterparts.[74] When the Earl of Marchmont went to the House on 5 March 1750, he found the

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70. See supra., p.290. Proceedings in Committee were presided over by the Chairman of Committees, see infra., p.473.

71. Timberland, History, v, 335; for the debate, pp.314-63; L.J., xxv, 236,237.

72. Chatham Corr., ii, 385 n.

73. See the seating plan of the House of Lords, Gough Maps 23, f.52, supra. inter. pp.290-291.

74. The Earl of Bute was a representative peer between 1737-41, and again 1761-80.

Earls of Findlater and Leven already sitting together and was summoned to join them. Later, when the Duke of Argyll entered the House, Findlater and Marchmont left their places to converse with him.[75] When the Earl of Shelburne raised the issue of the dismissal of the Earl of Pembroke and the Marquess of Carmarthen from their county lieutenancies on 6 March 1780, he referred to both peers as being seated near him.[76] Carmarthen and Shelburne sat in the House by the titles of Lord Osborne and Lord Wycombe, respectively, and would have sat fairly close to one another on the barons' bench. Pembroke would officially have been placed in front of them on the earls' bench.[77]

However, there are also instances of peers sitting in places inappropriate to their rank. During a late debate in the Lords in February 1778, Earl Mansfield left his own place in the House to sit by Lord Camden, and confided in him his anxiety about the current state of affairs.[78] Mansfield was the most junior earl in the House, his letters patent being dated 31 October 1776, and his proper place, therefore, was on one of the cross-benches.[79] Camden's official position was on the barons' bench, though there is no firm evidence that either was seated originally according to the terms

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75. H.M.C. Polwarth MSS., v, 277. All four peers named were Scottish representative peers in the Parliament of 1747-54, and the Journals show that according to precedence the three earls would have been quite correct to sit together. L.J., xxvii, 503. However, there is no indication as to where they were seated.
76. Parl.Hist., xxi, 217.
77. L.J., xxxvi, 53-4,55.
78. Walpole, Last Journals, ii, 106-7.
79. L.J., xxxv, 5-6.

of the Act of Parliament. On 6 March 1782, the House was put into a Committee of the Whole House to discuss the causes of the British surrender at Yorktown, in the course of which Lord Chancellor Thurlow invited Lord Osborne, the son of the Duke of Leeds, to join him on the upper end of the earls' bench, where they conversed for a long time.[80] One of Thurlow's predecessors, the Earl of Northington, used the occasion of the debate on the Window Tax Bill, 28 May 1766, to talk to the Dukes of York and Gloucester who sat with him on the woolsack.[81] The second Order of the Day on 14 June 1781 was the Committee Report on the Bill for enclosing the parish of Kingston. Lord Viscount Dudley spoke against recommitting the Bill. His comments on the judicial structure, which made the House of Lords the final court of appeal, brought objections from the woolsack, which were countered by one of two peers who sat next to Dudley — either Earl Bathurst, the Lord President, or, more likely, by Lord Loughborough, the Lord Chief Justice of the Common Pleas.[82]

The eighteenth century saw the firm establishment of a new convention in the seating habits of the members of the House of Commons, namely the division of the chamber into government and opposition benches. A similar development in the House of Lords was not feasible due to the physical arrangement of the peers' benches, which was imposed and upheld by the statute of 1539. Parliamentary language such as 'the other side of the House' was

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80. Leeds Memoranda, p.61.
81. Fortescue, Corr. of George III, i, 345-6; L.J., xxxi, 405.
82. Debrett, Parl. Register (2nd.ser.), iv, 318; L.J., xxxvi, 313, 315. Lord Loughborough was a future Lord Chancellor, who held office between 1793 and 1801.

common to both chambers as a means of designating political opponents,[83] but without further evidence as to the actual places of peers in the House of Lords, the phrase cannot also be attributed with the same literal meaning that is applicable to its use in the Commons, unless used by temporal or spiritual peers to refer to one another.[84] The same qualification must be applied to the phrase 'the lord over the way' which, in the Upper House, could be used to denote a political opponent[85] or a friend.[86]

Nevertheless, contemporary sources do provide evidence of peers of like political convictions sitting together in the House. In his report on the events of 15 January 1770 to the Countess of Chatham, her brother, Earl Temple, stated that he sat next to the Duke of Richmond and the Marquess of Rockingham who invited him to lead the Opposition's assault on the Government that day.[87] Richmond and Rockingham, according to the Act of 1539, would both have been placed high on the earls' bench; Temple, however, had the lowest precedence of all but one of the earls present that day, and officially ought to have been seated nowhere near his colleagues. The same was true of Lord Camden on 15 November 1775: in the debate on the motion to address the King to ascertain the number of troops in America before the war, the Duke of Richmond retaliated verbally on Lord Lyttelton for his severe attack on Camden who, according to the Duke, was seated at his right hand, and this was in spite of Camden being the most

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83. E.g., Timberland, History, iii, 191(1721); Almon, Parl.Register, v, 41,46(1775); B.L.Add.MS.35617, f.95(1780).
84. E.g., Almon, Parl.Register, x, 468(1777).
85. E.g., ibid., v, 161(1775); x, 389(1778).
86. E.g., the Duke of Bolton's reference to the Earl of Bristol, ibid., x, 453(1778).
87. Chatham Corr., iii, 395; L.J., xxxii, 399,403.

junior of the barons present.[88] Three years later, and still in opposition to the North Ministry, Richmond complained in the debate on 25 February 1778 that during the whole lengthy inquiry into the State of the Nation, 'There had not been a single proposition made by the lords who sat near him, tending to obtain information as to the real state of the nation, which had not been objected to, and denied since the inquiry was begun'.[89]

Pro-government supporters also sought each other's company in the House. During the proceedings of 20 May 1725, on the Bill to restore his lands and inheritance to Henry St.John, the attainted Viscount Bolingbroke, it was observed that the Duke of Devonshire who was Lord President of the Council, the Duke of Somerset, and the Earl of Orford, had 'sat together and voted all against the Bill, giving distinguished noes'.[90] The Regency Bill of 1765 was presented to the House of Lords by the Southern Secretary, the Earl of Halifax, on 29 April 1765. Later that day, he sent a report of the day's proceedings to George III and included his remarks about the Duke of Newcastle's speech, which he had made at the time in the House to the 'friends about him'.[91]

By the end of the period under study, there are indications that seating habits according to political alignments were becoming more clearly defined in the Upper House. This is suggested by the

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88. Almon, Parl.Register, v, 89; L.J., xxxiv, 508.
89. Almon, Parl.Register, x, 249; L.J., xxxv, 323,326.
90. H.M.C. Portland MSS., vi, 6; L.J., xxii, 548-9. There was another significance to their association on this occasion. Orford had been one of the Junto Whigs in the reign of Queen Anne, and all three were appointed Regents of England on her death. This, therefore,was a vote against their old Tory rival. The Bill did, eventually, pass the House despite another three divisions against it on 22 and 24 May 1725. See Sainty and Dewar, Divisions.
91. Fortescue, Corr. of George III, i, 79; L.J., xxxi, 162.

occasional but explicit use of the term 'opposition benches'. On 2 June 1779, the Earl of Shelburne moved that the House address the King to request information as to what steps had been taken, following a previous Address of the Lords, to relieve the distress of the Irish people.[92] When another ministerial opponent, the Duke of Manchester, rose later in the debate, 'some disorder having taken place, the opposition benches compelled order'.[93] On 25 January 1781, Lord Viscount Stormont informed the Lords that Britain and Holland were at war, and placed before them documents relating to the affair.[94] The Opposition found these inadequate, and the debate that followed was particularly warm and keen, so much so that it brought comments from the speakers themselves. The Marquess of Rockingham 'expressed his astonishment at the novel language which had prevailed that day on the opposite benches', and he accused the Government of taking the country into war on inadequate grounds. The Earl of Fauconberg, a pro-Government peer, also 'complained much of the language which was predominant in one part of the House', especially that 'which imputed corrupt motives indiscriminately to such of their lordships as supported the measures of Government'.[95] On 5 December 1782, during the debate on the Address in Reply to the King's Speech, Lord Grantham, the Foreign Secretary, used the opportunity of being seated near Lord Osborne to offer him the post of Ambassador to France.[96] Although both were barons, the higher seniority of Osborne's peerage ought to have put them far apart.[97]

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92. Ibid., xxxv, 771.
93. Almon, Parl.Register, xiv, 391.
94. L.J., xxxvi, 202.
95. Debrett, Parl.Register (2nd.ser.), iv, 64,69.
96. L.J., xxxvi, 572.
97. Leeds Memoranda, pp.76-7.

In the light of the fact that Osborne, however, had had the responsibility of moving the Address, it raises the question whether it had become customary by that time for the mover of the Address to sit with leading Government peers in a particular part of the House, which could be compared to the Treasury bench in the House of Commons.

Against these examples, however, must be considered the unequivocal references to peers of opposed political views sitting next or near to one another and in accordance with the directives of the Act of Parliament of 1539. On 28 November 1777, the Duke of Richmond moved for an Address to the King requesting that the weekly returns from the commanders at several ports, including Plymouth and Portsmouth, be laid before the House. While explaining the grounds for his motion, he was interrupted by the Earl of Suffolk who whispered something to him.[98] Logically, the Duke, who was one of the leaders of the Opposition, would not be expected to sit near the Secretary of State for the North, but if they sat in adherence to the seating order of the House, both would have sat on the upper end of the earls' bench, and separated, on this occasion, only by the Duke of Bolton and the Earl of Hertford.[99] This is consistent with contemporary references to similar occurrences in earlier decades. In the debate of 8 May 1765 on the Duke of Bedford's bill to repeal the Marriage Act of 1754, an acutely embarrassed Earl of Halifax, Secretary of State for the South, found himself sitting next to the Duke of Newcastle, a leader of the Opposition.[100]

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98. Almon, Parl.Register, x, 52.
99. L.J., xxxv, 256.
100. B.L.Add.MS.32966, f.363.

Halifax had been responsible for introducing the Regency Bill in the Lords,[101] which was now the subject of an escalating controversy and political battle between Government and Opposition. On 15 December 1768, the Secretary of State for the Colonies, the Earl of Hillsborough, put before Parliament a series of resolutions condemning recent events in the province of Massachusetts.[102] First to his feet to address the House after the resolutions were read was Earl Temple who dismissed them as unworthy of a minute's consideration; and then, abruptly and in great haste, he left the House.[103]

> Upon which, one in the Ministry said to one of the Opposition who sat next him, "Tis pity Lord Temple ventured to come abroad in such circumstances; he says he is not well, and by his abrupt departure, he has certainly taken physic". "If that's the case', replied the other, 'I wish he had taken the resolutions with him."

Finally, and perhaps most significantly, on 8 April 1783 the two leaders of the opposing parties in the House were to be seen sitting next to each other. The Duke of Richmond, seeking confirmation of the rumour that Lord North was to be made a peer, turned for an answer to the newly-appointed First Lord of the Treasury, the Duke of Portland, who was sitting at his right hand.[104] In strict terms, Portland ought to have been on Richmond's left, the latter's peerage being the senior of the two, but Portland's office presumably, though unofficially, may have given him the position of precedence.[105]

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101. See supra., p.304.
102. L.J., xxxii, 209-10.
103. Franklin Papers, xvi, 30-31.
104. Debrett, Parl.Register (2nd.ser.), xi, 104.
105. L.J., xxxvi, 638-9.

The seating arrangements of the House of Lords, as imposed by the Act of 31 Henry VIII, reflected the concern of the peerage with the issues of precedence and dignity. The ceremony associated with the placing of peers in Parliament was closely linked to the Act, and the continuation of the practice simultaneously ensured the perpetuation of the social principles involved. These remained vitally important in the eighteenth century House of Lords; hence the abandonment of the practice of sitting according to precedence, in favour of the more modern convention of a political division of the chamber, would inevitably be a long and slow process. In the Upper House, it was also hindered by the physical arrangement of seats, which again reflected the provisions of the Act of 1539.

The greatly increased membership of the House of Lords in the eighteenth century made a rigid adherence to the Act impracticable, and hence change became inevitable. The impression gained of seating habits in the Lords during the period is that, while peers generally continued to sit in their appropriate ranks, no attempt was made to assert precedence within the ranks. The practice for political associates to sit together in the House was clearly under way by the last quarter of the century, but the evidence remains inconclusive as to whether government or opposition peers had begun to regularly sit in any particular part of the House. However, no permanency could be given to any new developments while the Lords continued to meet in the limited confines of the White Chamber. The addition of 32 Irish representatives to the membership of the House in 1800 necessitated the move to the larger Court of Requests,

where the seating arrangements of the new House of Lords chamber, according to contemporary sources, were based on a physical division of the chamber into government and opposition sides. [106]

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106. H.L.R.O., Records of the Lord Great Chamberlain, Miscellaneous Records, Lord Byron's Trial 1765: Account of the introduction of Lord Byron, 13 March 1809.
The House of Lords 1808 — a drawing by Rowlandson and the elder Pugin, Hastings, Parliament House, p.166.

I X

STRANGERS IN THE HOUSE

'The labours within the House are now the labours of Hercules; for the House being of late kept clear of hearers, we are reduced to a snug party of unhearing and unfeeling lords, and the tapestry hangings.'[1] So wrote the Earl of Chatham to Countess Stanhope on 16 December 1770 following the events of 10 December when all strangers, including members of the House of Commons, were forcibly ejected from the Lords' chamber. The pertinence of Chatham's remarks lies in the fact that they accurately describe what would be the situation within the House of Lords were the Standing Orders,prohibiting all others except those who could rightfully be present in the chamber, to be rigidly enforced. Evidence gathered from various sources, however, suggests that this was the exception rather than the rule.

The Standing Orders restricting the entry of strangers into the House of Lords were the creation of the early eighteenth century. Persons allowed to be present during proceedings of the House were limited to lords of Parliament, the eldest sons or heirs of peers,[2] and the assistants of the House.[3] Standing Order number 40 was accepted as the recommendation of the Lords Committee for Privileges in 1707, appointed for the purpose of determining ways 'to prevent the irregularities that often happen in this House',[4] implying that the lords were already being pestered, and possibly their proceedings

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1. Chatham Corr., iv, 54-5.
2. See infra., p.326.
3. Standing Order No.40 (5 April 1707).
4. Ibid.

disrupted on occasions, by interested persons who had no right to be there.[5]

On 26 January 1721 a new resolution was added to the Roll of Standing Orders, namely, that an Order of the Day for taking into consideration an item of public business should not be read until the House of Lords had been cleared of strangers.[6] This, together with Standing Order No.40, were the two Orders mainly invoked for excluding strangers from the Upper Chamber. However, on the occasion in December 1770, in order to emphasise the ruling of the House against strangers, all other relevant Standing Orders touching the matter were called for to be read. Two of these, numbers 10 and 43, were the seventeenth century antecedents to Standing Order number 40; firstly, all personal attendants of peers were to retire after escorting their lord to the House;[7] secondly, admission to the lobby and Committee rooms of the House of Lords was granted to noblemen and attendants of the House only.[8] It was also deemed necessary to specifically prohibit the presence of strangers at any conference or Committee of the House of Lords.[9] It was also customary to order the House to be cleared of strangers whenever a division was to be held.[10]

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5. An earlier resolution of 24 March 1670 had denied the public admission to the Lords' debates. L.J., xii, 324.
6. Standing Order No.112 (26 January 1721). This occurred at the height of the South Sea Company inquiry, and may be connected with the great public interest in the affair. L.J., xxi, 407,409.
7. Standing Order No.10 (1621).
8. Standing Order No.43 (23 May 1628).
9. Standing Order No.39 (1621).
10. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.3.

The justification commonly given for the Standing Orders against strangers was concern for the physical convenience of the peers, the heat on overcrowded days within the limited confines of the debating chamber being particularly disagreeable to them.[11] The more usual reason for their enforcement, however, was the need to preserve the secrecy of the Lords' proceedings on politically sensitive issues, though both could coincide, as it was such matters that drew the largest attendance. This motive is exemplified by the decision to clear the House at the second reading of the Septennial Parliaments Bill, 14 April 1716,[12] and before the Committee stage of the Mutiny Bill on 20 February 1718.[13] During the discussion of the Roll of Standing Orders on 13 May 1742, the Duke of Bedford referred to the occasion when 'our House was cleared about a month ago when there were not 9 persons to be sent out of it'.[14] The date and importance of the issue suggests that the reference was to the expulsion of strangers on 6 April 1742 at the second reading of the Place Bill.[15] Moreover, at intervals during the century the Lords enforced a complete exclusion of strangers, for which there are no references in the official minutes of the House but which demonstrate the effectiveness of the Standing Orders when executed strictly. The aim on these occasions was to impose a ban on Parliamentary reporting for the period, as occurred in 1728,[16]

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11. Examples of valid causes for ejecting strangers are L.J., xxx, 11 (1760), and infra., p.319.
12. L.J., xx, 331.
13. Ibid., p.617.
14. B.L.Add.MS.6043, f.119.
15. Ibid., f.113; L.J., xxvi, 92.
16. Timberland, History, iv, 7.

after Lord Lovat's trial in 1747,[17] and at the time of the American debates in early 1766.[18]

Between 1714-84, the House of Lords made various attempts to alter the Standing Orders concerning strangers, but on most occasions it resolved against any change. Some of the proposals appear to have been efforts to make the execution of the Orders more effective.[19] On 13 May 1742, Lord Sandwich proposed to 'change the Order about clearing the House into this, that when that motion is made the question shall be put upon it. This is a matter that cannot bear a long debate and, as the House must be cleared for the division, if the question be carried for clearing it, nobody will return into the House and business will go on'.[20] The motion, however, was rejected by 77 to 35. A similar proposal was again made on 7 June 1758, but this time its supporters could only muster 11 votes against 23.[21] Privileged categories of strangers were usually exempted from a ban on admission to the Lords,[22] none more so than the members of the Lower House of Parliament. Peers in favour of a more lenient approach to the Standing Orders always approved of the suggestion that M.Ps. be admitted with the 'connivance' of the House.[23] The estrangement between the two Houses 1770-74 was caused by the inclusion of Commons' members in the Order that no strangers should be admitted;[24]

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17. Debrett, Debates, ii, 143.
18. Caldwell Papers, ii(2), 80; also infra., pp.320-21.
19. For other revisions of the Standing Orders, see infra., pp.318,326.
20. B.L.Add.MS.6043, f.119; for the debate, ff.119-21. L.J., xxvi, 120.
21. Ibid., xxix, 357; B.L.Add.MS.32880, f.53. For the division figures, see Sainty and Dewar, Divisions.
22. Infra, p.326.
23. B.L.Add.MS.6043, f.119(1742); Almon, Parl.Register, xiv, 147 (1779).
24. L.J., xxxiii, 24(10 December 1770).

yet an attempt to rescind that Order established the procedure by which some non-members could gain admission to the House of Lords thereafter.

On 6 December 1774, Lord Lyttelton moved for a debate on the following day so as to dispense with Standing Order number 40 in so far as to admit members of the House of Commons to the Lords' debates. Despite receiving the support of several lords in debate, the motion was rejected by 36 votes to 28.[25] Lyttelton again proposed the revision to the Lords on 15 December, this time recommending that the Upper House be opened not only to M.Ps., but to sons and brothers of peers, to members of the Irish and Scottish peerage and, furthermore, that every peer be allowed to admit one member of the public.[26] There were but two speakers in the ensuing discussion: the Duke of Manchester supported the idea; Lord Chancellor Apsley, though considering it his duty to uphold the Standing Orders, acknowledged that 'as it seemed to be the desire of many to relax their Standing Order in this point, he thought the civility due from one lord to another should induce the House to come into the proposal'.[27] Standing Order number 40 was not rescinded, but it became the new unwritten convention of the House that the Commons were to be admitted and that peers could introduce persons to attend the Lords' debates.[28]

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25. Almon, Parl.Register, ii, 4; Parl.Hist., xviii, 47; L.J., xxxiv, 276.
26. Parl.Hist., xviii, 47.
27. Ibid., col.48.
28. No reference is made to the decision in the Lords Journals, xxxiv, 278-80. On the same day, the House of Commons reciprocated by opening its doors once more to members of the Upper House. Walpole, Last Journals, i, 413-4; c.f. C.J., xxxv, 45-6 which also did not record the decision.

A week later, the Lords adjourned for the Christmas recess. When the House resumed on 20 January 1775, the Earl of Chatham, who had always supported opening its debates to strangers,[29] took full advantage of the House's indulgence. This was to be the occasion of Chatham's motion for the withdrawal of British troops from Boston,[30] and he particularly wished that Dr.Benjamin Franklin should be present. The following is Dr.Franklin's account of his introduction:[31]

> On the 19th. of January, I received a card from Lord Stanhope, acquainting me that...[he] would endeavour to procure me admittance. At this time it was a rule of the House, that no person could introduce more than one friend. The next morning, his Lordship let me know by another card, that if I attended at two o'clock in the lobby, Lord Chatham would be there about that time, and would himself introduce me...[He] taking me by the arm, was leading me along the passage to the door that enters near the throne, when one of the doorkeepers followed, and acquainted him, that by the order, none were to be carried in at that door, but the eldest sons or brothers of peers; on which he limped back with me to the door near the Bar, where were standing a number of gentlemen waiting for the peers who were to introduce them, and some peers waiting for friends they expected to introduce; among whom he delivered me to the doorkeepers, saying aloud, "This is Dr.Franklin, whom I would have admitted into the House;" when they readily opened the door for me accordingly.

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29. H.M.C. Polwarth MSS., v, 369-70.
30. L.J., xxxiv, 290.
31. Franklin Papers, xxi, 575-6.

The doorkeepers were the particular targets of uninvited strangers to the House of Lords, for whom the most common method of gaining admission to the debating chamber was to bribe the doorkeepers.[32] It was by this means that Edward Cave, editor of the Gentleman's Magazine, and his employees entered the House and collected relevant material about the debates, which writers like Samuel Johnson would then use to compose reports of Parliamentary proceedings.[33] Similarly, Ralph Bridges failed to attend the Lords' third reading on 20 May 1712 of the Bill appointing Commissioners to examine grants made by the Crown because his friend, one of the doorkeepers, was ill.[34] A doorkeeper could face dismissal from his post for granting entry to unsanctioned persons. When the King had departed after giving the Royal Assent to legislation on 24 March 1725, the Lords' attention was drawn to the 'great crowd of strangers' who had been present at the time.[35] Thereupon, the doorkeeper in charge of the Bishops' Door, near the throne, was suspended for failing in his duty, and was only reinstated after making a full apology to the House and undertaking not to be guilty of the same neglect again.[36] However, it is not clear what was the nature of his offence, whether of admitting strangers at all, or of admitting them to a position so close to the throne.[37] On occasions, blame did not rest

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32. The doorkeepers themselves were commanded by Standing Order No.42 (14 February 1704) to remain outside the debating chamber while the House was in session.
33. Sir John Hawkins, Life of Samuel Johnson (2nd.edition), p.95.
34. Trumbull. Add.MS.136/3, Bridges to Sir W.Trumbull, 21 May 1712; L.J., xix, 454.
35. Ibid., xxii, 476.
36. Ibid., p.480.
37. See supra., p.315; infra, p.335.

entirely or solely with the doorkeepers, a fact acknowledged by the House of Lords on 27 June 1717 after the ejection of strangers during the trial of the Earl of Oxford. The House ordered the doorkeepers to name 'such lords as shall command or oblige them to admit any persons into the House, in breach of their lordships' orders'.[38] However, no further mention of the affair is made in the Lords Journals.

For the majority of debates there is no evidence whether strangers were in the House or not. Nevertheless, the contemporary references to strangers, by being so casual and incidental, suggest that their presence was normal. Furthermore, the paucity of examples of the Standing Orders being enforced implies that, for the most part, the presence of strangers in the House went unchallenged. This is substantiated by Lord Chancellor Hardwicke's remarks on 8 December 1740 when he commented on the irony of 'admitting all kinds of auditors to your debates' whereas 'part of the clerks' oath is to keep secret what passes in the House; and the House admits everybody'.[39]

The Standing Orders permitting only peers, bishops, and attendants of the House to pass along its lobbies and enter its chambers were inevitably and constantly being broken, since various members of the public were always present at Westminster Palace, whether they were there on valid grounds, such as being interested parties or witnesses in legal cases, or canvassing support for a petition or bill - or whether their intentions were those which drew the severest

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38. L.J., xx, 512,516.
39. B.L.Add.MS.6043, f.41.

strictures from Parliament, namely, to gain entrance to the debating chambers of either House in order to report on their proceedings. Others were simply attracted by the pageantry of the place and driven by curiosity to watch its ceremonial proceedings. It was the large crowds in the last category, drawn by the public spectacle whenver the King came to Parliament,[40] that could on occasions result in considerable disruption and which led in 1720 to the regularisation of procedure and arrangements for such occasions so as to prevent any future disorder. Henceforth, immediately prior to the King's arrival, all doors leading to the House of Lords were to be shut to the general public, and none to be admitted other than peers, elder sons, and assistants , all of whom had a right to be in the House; but entry was also to be granted to foreign ministers and dignitaries on the authority of the Lord Great Chamberlain, and to certain ladies and gentlemen who had been previously nominated by peers.[41] However, the continued popularity of such open days necessitated a further restriction of the Order in 1734. Thereafter, the area of the Prince's Chamber was to be particularly guarded and, at the state openings of Parliament, only members of the public who had applied directly to the Lord Great Chamberlain for permission would be admitted.[42] Despite the efforts to regulate entry into the House on such occasions, the state openings of Parliament continued to be overcrowded affairs. On 25 November 1762, Lord Hillsborough had great difficulty in introducing his

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40. E.g., Quincy Memoir, p.252(1774).

41. Standing Order No.111 (22 Decemger 1720). The designation 'ladies' did not denote rank: see infra. p.325 and the attempt in 1782 to alter the Order so that peeresses only would be admitted. L.J., xxxvi, 525, also infra., p.337.

42. Standing Order No.111 - the amendment of 22 February 1734.

guest, and even then broke the rules by securing him a place near the throne.[43] So crowded was the chamber on one occasion that the French traveller, Jean Pierre Grosley, was forced to comment that 'The King himself finds it difficult to get to his throne, through the multitude which surrounds it'.[44]

There is no evidence in the Journals whether peers observed Standing Order number 111 and sought the House's approval for their guests on state occasions. Nor is there evidence whether this arrangement, if adhered to, could unofficially be applied (prior to 1775[45]) to the rest of the session. Nevertheless, that strangers did gain admission to the Lords' proceedings is clear. On 16 January 1741, the Lords were in debate on an Address to the King requesting to know who had advised him in his answer to their previous Address that the family of the Prince and Princess of Wales be named in the Common Prayer Book.[46] John Potter, Archbishop of Canterbury, had a particular contribution to make to the discussion as he had been appointed to search the prayer books for precedents. Yet he failed to address the House because he could not be seen for the crowd of strangers that surrounded him. This led to the House being cleared of strangers;[47] but some indication as to why this step had not been taken sooner was provided by the Earl of Abingdon who

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43. Chatham Corr., ii, 194 n.1. This position was reserved for sons of peers and foreign dignitaries; see infra., pp.325,335.
44. Grosley, Tour, ii, 192. Possibly 10 January 1765.
45. Supra., pp.314-5.
46. L.J., xxv, 570.
47. B.L.Add.MS.6043, f.53. The Journals do not refer to the ejection of strangers from the chamber, but simply show that the debate was left unresolved by the adjournment of the House. L.J., xxv,570.

asserted it was not necessary to enforce the Standing Orders 'whilst persons behave with decency'.[48] Another royal matter that aroused considerable public interest was the Regency Bill of 1765. At its first reading on 29 April, a very large 'audience' had found entry to the House,[49] and this was sustained throughout the stages of the Bill. Those present at the Committee stage on 2 May witnessed the lords in their most indecisive mood, disputing for two hours on the wording of a motion which they then immediately rejected, during all of which 'the spectators stood laughing around'.[50]

Many strangers had a special interest in particular debates of the Upper House. On 13 May 1765, when the Regency Bill was returned to the Lords with the Commons' amendments, the Bar was crammed with master-weavers awaiting to see the fate of the Bill to impose duties on imported silks and velvets, which they believed would protect and promote the home industry. The Bill, however, was denied a Committee stage, mainly by the efforts of the Duke of Bedford who, a few days later, became the victim of the weavers' anger when they attacked his coach and London home.[51]

Another group of strangers who sought admission to the House of Lords whenever its proceedings were of importance to them, was that of American merchants and agents. The American proposals of the Rockingham Ministry in 1766 were a typical example of such proceedings,

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48. B.L.Add.MS.6043, f.53. For a similar comment later in the period, see Almon, Parl.Register, xiv, 155 (9 March 1779).
49. Fortescue, Corr. of George III, i, 78.
50. Walpole, (Yale) Correspondence, xxxviii, 544. For the whole account, see pp.541-5.
51. L.J., xxxi, 200; Rockingham Memoirs, i, 199.

yet both Houses of Parliament imposed a ban on strangers on that occasion.[52] Nevertheless, on some days the exclusion was selective, not total. The debate in Committee on the Government's resolutions on 3 February 1766 was witnessed by William Rouet.[53] A week later, William Pitt wrote to his wife, Lady Chatham, that 'the world [was] at the House of Lords today'[54] (10 February 1766) when the House received the Committee's report on the American resolutions, and approved them 'without any debate, which surprised the spectators'.[55] When the Declaratory Bill and Stamp Act Repeal Bill received the Royal Assent on 18 March 1766, Charles James Fox, himself a 'stranger', noted that, 'There were about 150 of the most considerable merchants in the rooms near the House of Lords, signifying their satisfaction at what had been done, but all with the greatest decency and no shouting or hollowings'.[56]

The Americans' perseverance in gaining admission to the Lords continued in the next decade.[57] Josiah Quincy of Massachusetts, who made several visits to the House during his stay in England

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52. Caldwell Papers, ii(2) 65,80.

53. Ibid., p.68.

54. Chatham Corr., ii, 376. The letter is dated 11 February, but the House was not in session that day.

55. H.M.C. Stopford-Sackville MSS., i, 108; L.J., xxxi, 262-3. The probable cause of the surprise was the Administration's decision not to challenge the amendment that had been made to the fourth resolution, on which they had suffered a defeat on 4 February (Sainty and Dewar, Divisions). The more strongly-worded resolution now 'required' rather than 'recommended' the Colonial assemblies to compensate those who had suffered in the riots. (H.M.C. Stopford-Sackville MSS., i, 106; Thomas, Stamp Act Crisis, p.199.

56. B.L.Add.MS.47584, f.41; L.J., xxxi, 314.

57. E.g., Franklin Papers, xxi, 598,599 (17 and 18 March 1775, the occasion of the debate on the second reading of the Bill to restrain the trade of the New England colonies, and its Committee stage. L.J., xxxiv, 358,359).

1774-75, commented on the 'great audience without the Bar'[58] on 20 January 1775,[59] whom William Pitt the Younger positively identified as Americans.[60] Quincy, it appears, had been more fortunate than many of his compatriots, for he had secured 'one of the best places for hearing and taking a few notes'.[61] Furthermore, two incidents involving Americans demonstrate that reference could be made to specific strangers in the House without leading to the Standing Orders being enforced. During the debate on the Address in Reply to the King's Speech, 30 November 1774, the Earl of Hillsborough, the mover of the Address,[62] remarked 'that "there were then men walking in the streets of London, who ought to be in Newgate or at Tyburn" '.[63] When pressed by the Duke of Richmond to explain whom he meant, the Earl pointed to Benjamin Franklin and Josiah Quincy, though he did not name them. However, when the petition of the American Congress came before the Lords on 7 November 1775, the Duke of Richmond, recognising William Penn, the Governor of Pennsylvania, standing below the Bar, desired that he be examined regarding the authenticity of the petition.[64] Thus began a debate on the procedure for calling witnesses before the House.[65] Richmond's motion was turned down, but the Lords did not pursue the matter of there being strangers present.[66]

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58. Quincy Memoir, p.329.
59. Supra., p.315.
60. Chatham Corr., iv, 376.
61. Quincy Memoir, p.318. Unfortunately, he did not specify where he was placed, nor how he got there.
62. Parl.Hist., xviii, 34.
63. Quincy Memoir, p.258.
64. Almon, Parl.Register, v, 43.
65. Supra., pp.39-40.
66. L.J., xxxiv, 499-500.

The indulgence shown by the House to American representatives during the latter part of the period appears to have once applied to ladies. This is implied by the decision of the House of Lords at the conclusion of the 1738 session that 'there should be no crowd of unnecessary auditors; consequently the fair sex were excluded, and the gallery destined for the sole use of the House of Commons'.[67] This order was challenged by a band of noble ladies eager to attend the debate on the Spanish Convention, 1 March 1739. They were led by the Duchesses of Queensberry and Ancaster, Lady Huntingdon, Lady Westmorland, and Lady Cobham. Their battle with the officers of the House continued for six and a half hours: the doors of the gallery having been locked against them, and their requests to be admitted repeatedly refused, they stood outside in the lobby and 'bore the buffets of a stinking crowd from half an hour after ten till five in the afternoon, without moving an inch from [their] places, only see-sawing about as the motion of the multitude forced [them]'.[68] An account of how the valiant ladies were eventually successful in entering the gallery follows:[69]

> These Amazons now showed themselves qualified for the duty even of foot solders; they stood there... without either sustenance or evacuation, every now and then playing volleys of thumps, kicks, and raps

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67. Letters and Works of Lady Mary Wortley Montagu, ed. by Lord Wharncliffe (3rd edition, 1861), ii, 37-8. Turberville dates the order against strangers to May 1738, The House of Lords in the Eighteenth Century, p.14. For the history of the gallery in the House, see infra., pp.333-8.

68. The Autobiography and Correspondence of Mary Granville, Mrs. Delany (ed. Lady Llanover), ii, 44. For her full account, see pp.44-5.

69. Letters and Works of Lady Mary Wortley Montagu, ed. by Lord Wharncliffe (3rd edition, 1861), ii, 38-9.

> against the door with so much violence that the speakers in the House were scarce heard. When the lords were not to be conquered by this, the two Duchesses (very well appraised of the stratagems in war) commanded a dead silence of half an hour; and the Chancellor, who thought this a certain proof of their absence (the Commons also being very impatient to enter) gave order for the opening of the door; upon which they all rushed in, pushed aside their competitors and placed themselves in the front rows of the gallery. They stayed there till after eleven, when the House rose; and during the debate gave applause and showed marks of dislike, not only by smiles and winks (which have always been allowed in these cases) but by noisy laughs and apparent contempts; which is supposed the true reason why poor Lord Hervey spoke miserably.

The majority of references to the admission of ladies in the House, however, conform to Standing Order number 111 which allowed them entry on such days as the King came to Parliament, when their presence, and conduct, undoubtedly caused inconvenience and disruption in the Upper Chamber. Special care was taken to seat ladies of senior rank in the best places in the House: as on 3 April 1744, when the wife of the Venetian Ambassador, the Duchess of Richmond, and her daughter, were conducted to sit on the woolsacks.[70] The large number of ladies present on these days was frequently worthy of comment,[71] but none more so than on 19 March 1761 when they even stood on all the benches.[72] Public days in the House of Lords

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70. H.L.R.O., Records of the Lord Great Chamberlain, Letters and Papers, i, MS. No.55.

71. E.g., Grosley, Tour, ii, 192 n (1765); London Chronicle, 19-21 March 1761.

72. Walpole, (Yale) Correspondence, xxx, 164.

were doubtedlessly regarded as social occasions; little wonder, therefore, that a Quaker woman chose the prorogation of Parliament on 7 June 1753 as an opportunity to address a large congregation, for as soon as the King had withdrawn from the House, she 'began to hold forth...for near twenty minutes against the vanity of dress'.[73]

The other category of strangers whom the House of Lords officially permitted to attend on state occasions were foreign dignitaries.[74] The convention of the House was that these officials would have standing-room between the archbishops' bench and the bishops' door,[75] which in practice meant they crowded around the steps of the throne.[76] Foreigners, however, did gain admission when the House sat for business,[77] but in 1777 this led to an unpleasant incident when ministers made unguarded and disrespectful remarks about the French in the presence of French officers. This caused uproar in the continental press, and it was even rumoured that Lord Suffolk, the Northern Secretary, had been challenged to a duel.[78]

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73. Debrett, Debates, iii, 138 n.
74. E.g., London Evening Post, 9-11 June 1772.
75. H.L.R.O. Records of the Lord Great Chamberlain, Letters and Papers, i, MS.No.223.
76. Grosley, Tour, ii, 192 and n.
77. E.g., Mar and Kellie MSS., S.R.O. GD 124/ 15/1197/33 (1720); supra., p.157. London Evening Post, 17-19 December 1765.
78. Walpole, Last Journals, ii, 92.

The Standing Orders of the House of Lords recognised one very privileged category of 'strangers'. Following the Act of Union of 1707, the Lords resolved 'That the eldest sons of all peers who have a right to sit and vote in this House have the same rights and privileges', [79] which in accordance with an Order made less than a year earlier meant that they too 'shall be in any part of the House during the sitting of the House'. [80] Elder sons of peers, therefore, would be exempted from leaving the Upper Chamber if it were decided to clear the House of strangers. However, an important distinction was made on 12 July 1715 when, previous to committing the impeached Earl of Oxford to the Tower, the House ordered all strangers to withdraw immediately, and special notice was made that this should include 'the peers' sons standing by the throne [who] were Members of the House of Commons'. [81]

Generally, however, such was the indulgence of the Lords to M.Ps. that they too could be considered a privileged category of strangers. Some members clearly found the sittings of the Upper House the most opportune time to consult peers on a personal matter, as did the Earl of Egmont [82] on 26 March 1731 when he approached Lord Chancellor King on an ecclesiastical issue. [83] Most references

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79. Standing Order No.41 (26 January 1708).
80. Standing Order No.40 (5 April 1707). On 18 April 1788 these two orders were vacated and replaced by Standing Order No.130.
81. L.J., xx, 114.
82. Egmont was the M.P. for Harwich 1727-34. He was known at this time as Viscount Perceval, not being created an earl in the Irish peerage till 1733.
83. H.M.C. Egmont Diary, i, 163,167. For the Lord Chancellor's authority on such matters, see Campbell, Lord Chancellors, i, 18-19. For another example, see Grenville Papers, iii, 146(1765).

to the presence of M.Ps in the House confirm their attendance at debates of political or national importance. Bubb Dodington, the M.P. for Bridgwater, attended the second reading of the Regency Bill on 8 May 1751,[84] as did Horace Walpole at the same stage of a similar bill on 1 May 1765; nor did he hide the fact, for he stood on the steps of the throne for all to see.[85] John Dunning, M.P. for Calne, was in the Lords on 10 April 1770 when the Marquess of Rockingham, in vain, moved to postpone the House being put into Committee on the American Duties Bill.[86] M.Ps would also send reports of the debates they had witnessed to interested peers. Richard Rigby who, in the general election of 1754, was to become the Member for Tavistock, sent an account of the Lords' debate on the Address at the commencement of the 1753 session to his benefactor, the Duke of Bedford.[87] Among the papers of the Duke of Newcastle is a note sent him by James West, M.P. for St.Albans, giving the division figures of the House of Lords on the question, moved by the Duke of Bedford, on East India affairs, 10 April 1767. West explained that 'Mr.Montagu[88] being obliged to leave the House of Lords desired I would send Your Grace the numbers'.[89]

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84. Dodington Journal, p.117.
85. Walpole, Memoirs of George III, ii, 85. He was the M.P. for King's Lynn 1757-68.
86. P.R.O. 30/8/56, ff.98-9.
87. Bedford Corr., ii, 136,138-41. In 1753, Rigby was the M.P. for Sudbury.
88. Probably Frederick Montagu, M.P. for Northampton 1759-68 and Higham Ferrers 1768-90.
89. B.L.Add.MS.32981, f.107.

Among the ministers who often frequented the House of Lords was George Grenville: as, for example, on 29 November 1763, when the peers debated the House of Commons' resolution concerning '_The North Briton_' and Parliamentary privilege.[90] In early May 1764 he gave a long account of his conversation with the Duke of Richmond and General Conway (about the latter's refusal to vote with the Government) to two of his fellow Commons colleagues, Horace Walpole and Thomas Pitt, while they were standing at the Bar of the House of Lords.[91] Sir Robert Walpole appears to have received a singular distinction when he visited the Lords on 24 May 1733 for, throughout the day's proceedings, he remained seated at the Bar of the House, a very interested witness to the Opposition's motions of censure against his Ministry by way of the South Sea Company inquiry.[92] Another Premier who made no effort to conceal his presence in the House during a debate of importance to his Ministry was William Pitt the Younger who, on 4 February 1784, stood next to the Lord Chancellor as the Lords debated two resolutions condemning the unconstitutional actions of the Commons.[93]

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90. _Grenville Papers_, ii, 230.

91. _Ibid._, p.320.

92. _H.M.C._, _Carlisle MSS._, p.117. For another example of Walpole's presence in the House of Lords, see P.Yorke, 2nd Earl of Hardwicke, _Walpoliana_ (1783), p.14, quoted in Yorke, _Hardwicke_, i, 194.

93. Bishop of Bath and Wells (ed.), _The Journal and Correspondence of William, Lord Auckland_, i, 74.

The throne end of the debating chamber was a popular position for M.Ps attending the Lords.[94] At first, the space behind the throne was particularly convenient as it enabled Members to witness the proceedings without being observed.[95] Later in the century, members of the House of Commons were not so concerned about remaining hidden: Charles James Fox waited near the throne throughout a debate on Phillips's Powder Bill, 28 June 1781, and then went below the Bar in order to formally present the Bill to repeal clauses in the Marriage Act of 1753.[96] Whenever the Contractors and Cricklade Elections Bills were debated in the Lords in May 1782, 'Fox and Burke...in order to impress...[Lord Chancellor Thurlow] with respect, as well as to display the interest they took in the success of these measures, usually appeared in the House of Peers on the steps of the throne while the Bills were agitating'.[97] Admission to this privileged position in the chamber would also be granted to close political associates of peers, even though they were not members of the House of Commons. George Rose, a friend of Lord Thurlow, refused to remain as Secretary to the Treasury under the Fox-North Coalition and became involved in the plans to turn the Coalition Government out of office.[98] On 15 December 1783, Fox's India Bill was defeated in the House of Lords, having passed the Commons by large majorities.

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94. See infra., p.334.
95. E.g., Trumbull Add.MSS.136/3, R.Bridges to Sir W.Trumbull, 18 January 1712; also B.L.Add.MS.6043, f.119(1742).
96. Debrett, Parl.Register (2nd.ser.), iv, 370; also infra., p.331.
97. Wraxall Memoirs, ii, 284-5.
98. Namier and Brooke, House of Commons 1754-90, iii, 375.

Rose, having overheard two M.Ps voicing their certainty about the passage of the Bill, 'returned into the House, and on the steps of the throne I witnessed the effect of the division on the countenances of those gentlemen. The Earl of Marchmont was the first peer who went below the Bar; on seeing which Mr.Adam made an audible exclamation'.[99]

By the latter part of the period, the presence of Members of the House of Commons at the debates of the Lords had become an accepted feature of proceedings. The Lords' right to exclude all strangers was never surrendered but, eventually, it became customary to make an exception of M.Ps., as of the elder sons of peers.[100] Hence the storm that erupted on 10 December 1770 when members of the Commons were ejected from the Lords along with other strangers, the incident which led to an estrangement in the relationship of the Houses of Parliament.

The incident began when the Duke of Manchester rose to speak about the lack of naval power in the West Indies and at Gibraltar. He was interrupted by Lord Gower, who wished that Standing Order number 112 be read and the House be cleared, for 'in a House so crowded as the present, there might be emissaries from the Court of Spain and other powers'.[101] Furthermore, he claimed, there

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99. Harcourt, Rose Diaries, i, 48. Marchmont, a Scottish representative peer (1750-84) and Keeper of the Great Seal of Scotland (1764-94) by this symbolic gesture demonstrated the King's opposition to the Bill and his Ministers.

100. E.g., on 9 May 1770 the House of Lords issued written orders to the doorkeepers to exclude strangers in future except these two privileged categories. This followed complaints to the House of a breach of privilege as a result of reports of its proceedings appearing in the press. Debrett, Debates, v, 195; Parl.Hist., xvi, 978.

101. Debrett, Debates, v, 368.

were persons present who were taking notes of the proceedings. The ensuing scene was one of great confusion and clamour as shouts of 'Clear the House' rang around the chamber.[102] The Earl of Chatham left the House in disgust, having failed to make himself heard, and was followed by eighteen others. Next, in their blind zeal for adhering to 'order', peers insisted that the members of the House of Commons be turned out, although some protested that they attended on business, waiting for an appropriate pause in the proceedings of the House to present a bill from the Commons.[103] The Commons' representatives were forced to withdraw, though they were later re-admitted to carry out their duty, but then were hooted out of the Upper Chamber. After several motions demanding that numerous Standing Orders be read,[104] the peers added insult to injury by directing Lord Mansfield, as Speaker, to exhort the officers of the House to ensure 'that no person be permitted to be in any part of the House during the sitting thereof, except such who have a right to be in the House according to the Standing

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102. Leading the calls for the House to be cleared were Lord Denbigh, a lord of the bedchamber, and the Earl of Marchmont. The latter was a Scot whose shouts of 'Clear the Hoose' were mocked and imitated by Isaac Barré during the Commons' debate, 13 December 1770, on Lord George Germain's motion for a conference to restore relations between the two Houses, which was defeated. (Cavendish Debates, ii, 157,162 and n., 167). Both peers were regarded as the King's men, and hence gave rise to the suggestion that the whole incident had been planned and contrived . (Debrett, Debates, v, 369).

103. Technically, however, the M.Ps. were in the wrong, for the official procedure required them to wait outside until summoned to the Bar by Black Rod; infra., pp.525-6.

104. Supra., p.311.

Orders'.[105] Sixteen peers signed a Protest against this extra-ordinary affair, expressing their belief that it had been 'premeditated and prepared...for no other purpose than to preclude inquiry on the part of the Lords'.[106]

Proof of the rigidity with which the Standing Orders were enforced and that there were no exceptions, is provided by the incident in February 1771 when even Lord North 'the Premier was refused admittance into the House of Peers as a Commoner, but told that he might be admitted as a lord, which he would not accept of'.[107] The restrictions against the Commons officially came to an end four years later, in December 1774.[108] However, there is evidence which suggests that the non-admission of M.Ps. had begun to be relaxed earlier than that date. At the end of his account of the incident of 10 December 1770, John Clementson, Deputy Serjeant at Arms to the House of Commons, stated that 'no strangers were admitted [to the Commons] from this day till the adjournment before the holidays, except on the Mutiny Bill a few officers by leave of the Speaker. Strangers were admitted but not lords after the holidays, but the Lords still continued to shut their doors against all strangers (Members of the House of Commons as well as others) till the end of this session of Parliament'.[109] Furthermore, Edmund Burke was able to attend the Lords' debate of 23 December 1772 on

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105. L.J., xxxiii, 24. The House of Commons retaliated at once by agreeing to George Onslow's motion to clear the House 'peers and all'. Parl.Hist., xvi, 1323. Cavendish Debates, ii, 148. For various accounts of the episode, see Walpole, Memoirs of George III, iv, 143-146; Thomas Bartlett, Macartney in Ireland, p.129; Debrett, Debates, v, 367-9.

106. L.J., xxxiii, 23.

107. The Public Advertiser, 8 February 1771.

108. Supra., p.314.

109. Clementson Diary, pp.153-4.

the East India Commissioners Bill because 'strangers were admitted along with the counsel'.[110]

It was the established practice of the Lords, therefore, during the eighteenth century that strangers were generally allowed to be present. Part of the practical problem concerning their admission was that for most of the century there was no gallery in the House. The original gallery, erected in 1704 at the north end of the chamber, was demolished in 1711,[111] and there were no proposals for a replacement until 1735 when the possibility of having a temporary gallery, one which could be set up on such days as the King was in Parliament and removed at the end of the day's sitting, was considered and rejected.[112] The idea, however, was revived in 1737 when the Officers of the Board of Works were ordered to build a gallery 'over the lobby door, across the House, with four benches', which was the same plan as that of 1704.[113] This second gallery existed until 1741 when, following an order of 19 January, it was ordered to be locked up and taken down after the end of the session.[114]

The only accommodation for strangers in the House of Lords, therefore, was restricted standing-room at the Bar of the House or, for the privileged few, near the throne.[115] The fatiguing nature of attending a lengthy debate in the Lords was expressed

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110. Burke Corr., ii, 408.
111. L.J., xix, 246.
112. Ibid., xxiv, 555 (14 May 1735).
113. Ibid., xxv, 29 (24 February 1737).
114. Ibid., p.571.
115. Supra., pp.325,329; infra., pp.334-5.

by Sir Thomas Robinson, the M.P. for Thirsk, when he apologised to Lord Carlisle on 24 May 1733 for not sending him a more detailed account of the day's debate on the South Sea inquiry, 'but as I was seven hours on my legs in the House...I can't give so particular an account as I otherwise should do'. [116]

It was not until June 1778 that the Lords again issued an order that a gallery be erected over the lobby door; [117] but six months later, no start had been made and, on 7 December, the order of the previous session was discharged. [118] This became a live issue once more in 1779 as certain peers became conscious of the necessity to return the civility shown them by the Commons who 'accommodat[ed] them [peers], whenever they chose to hear their debates, with the best seats in their House'. [119] The proposal made by the Duke of Manchester on 4 March 1779 was that 'the gentlemen of the House of Commons...might be admitted between the throne and the woolsack, as had been customary in former times; and that the learned Lord on the woolsack might not be inconvenienced...the easiest method...would be to erect a bar across that part of the House'. [120] In his speech opposing the motion, Lord Viscount Weymouth expressed in the clearest terms the principle governing the Lords' attitude to strangers throughout the period: [121]

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116. H.M.C. Carlisle MSS., p.115.
117. Almon, Parl.Register, x, 425; L.J., xxxv, 511 (2 June 1778). See Colvin, History of the King's Works, v, 392.
118. L.J., xxxv, pp.529,530.
119. Almon, Parl.Register, xiv, 146. For the whole debate, see pp.146-8.
120. Ibid., p.146.
121. Ibid.

> He reminded the noble Duke, that the Standing Order of the House was directly against the admission of any strangers, but that by connivance, and what he considered as very proper connivance, strangers were daily admitted. With regard to that part of the House between the throne and the woolsack, it was well known that peers' sons, peers' brothers, and in fact every person any way related to a peer had admission. He saw, therefore, no necessity for the noble Duke's making a motion, the essence and meaning of which was at present complied with.

The Lord Chancellor, in his turn, stressed 'it was impossible for him to put the question upon a motion directly in the teeth of the Standing Order of the House', and suggested that a better way of paying a compliment to members of the Commons would be to grant them only admission to the Bar of the House where they 'would be much better accommodated...than if they were crowded between the throne and a rail', and where, moreover, they would be distinguished from all other persons. Furthermore, if his proposal was agreed to 'he would answer for the doorkeepers doing their duty'.[122]

After further debate, Manchester eventually withdrew his motion;[123] but five days later he was again arguing in favour of erecting a gallery to seat one hundred for the accommodation of M.Ps. as well as other categories of strangers: such as those whose education would benefit from listening to the debates, or who aspired to sit in the Upper House after serving in the Commons.

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122. For the Chancellor's speech, see ibid., pp.147-8.
123. L.J., xxxv, 611.

He further stressed that 'the power...would still remain with their Lordships of clearing the House, whenever they thought the admission of strangers improper, or whenever, from the turn of times, it was found advisable to shut their doors, and debate in secret'.[124] This tacit acknowledgement that strangers were usually tolerated in the House is reflected in the wording of the official motion entered in the Journal which read, 'That a Committee be appointed to consider in what manner the House may be rendered more commodious, at such times as the doors are open'.[125] The Earl of Effingham supported the proposal, dwelling in particular on the incommodious conditions when members of the Commons came as spectators to causes and trials, for on such occasions 'the Bar was so crowded with the counsel, the attorneys, the agents, the witnesses, etc. that there was not sufficient room for them to stand'.[126] But all arguments were to no avail, and the vote on the question read Contents 22, Not Contents 42.[127]

A few months later, James Martin, M.P. for Tewkesbury, fired a warning shot to the Lords: he compared the preferential treatment afforded the peers attending the Commons, who were allowed to sit under the gallery of that House, to the Lords' persistent exclusion of M.Ps., and threatened that unless the peers reconsidered their attitude, no distinction should be made between them and other strangers in the new session.[128] Consequently, two days later, 11 June 1779, the Earl of Effingham moved for an Address in favour

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124. Almon, Parl.Register, xiv, 153.
125. L.J., xxxv, 618 (9 March 1779).
126. Almon, Parl.Register, xiv, 155.
127. Ibid., p.156.
128. Ibid., xiii, 551-2.

of erecting a gallery 'over the entrance from the Painted Chamber' [129] to seat members of the House of Commons, but after a debate of several hours, it was rejected by 14 votes to 27. [130]

Hopes, surely, must have been raised three years later when the Lords Committee, appointed to consider under what regulations and on what occasions it would be proper to admit strangers, reported in favour of erecting a gallery in the House to accommodate ladies who applied to the Lord Great Chamberlain for admission on state occasions, to seat interested persons at legal hearings, and members of the House of Commons and Irish peers on all other days when 'the Standing Orders 40 and 112 shall not be thought proper to be enforced'. [131] However, upon considering the report on 18 June 1782, all the resolutions were rejected and Standing Order 111 was reaffirmed. [132]

The peers who approved of the various motions for building a gallery in the Upper House for strangers took care to point out that 'a gallery...might be erected in such a manner, as neither to heat the House in warm weather, render it more cool in frosty weather, nor be an inconvenience to their lordships in any shape whatever'. [133] Support for the idea of a gallery in the House of

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129. Ibid., xiv, 484.

130. Ibid., p.485; L.J., xxxv, 789.

131. Ibid., xxxvi, 525. The Committee was appointed 30 May (p.510). For the whole report, see pp.524-5.

132. Ibid., pp.533-4.

133. Almon, Parl.Register, xiv, 146 (9 March 1779).

Lords even came from George III,[134] but the problem was not solved until the House of Lords removed to the more spacious Court of Requests in 1801. Throughout the eighteenth century, whenever its Standing Orders were challenged, the House upheld Lord De La Warr's statement on 13 May 1742 that 'It should be presumed that the lords are for having the Orders of the House observed'.[135] However, the observance paid to those rules was so nominal that when the 'peevish order[s]...against the admission of strangers'[136] were enforced, they were greatly resented by all involved.

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134. J.Greig (ed.) The Farington Diary, i, 262 (1799).

135. B.L.Add.MS.6043, f.119.

136. Caldwell Papers, ii(2), 80.

X

THE DAY IN THE HOUSE

The day in the House of Lords began with the reading of prayers. Upon arriving at the House, the Lord Chancellor sought the peers' approval for convening the assembly, whereupon the 'youngest' [1] or most recently appointed bishop present approached the throne, from where he officiated at the opening service. [2] This done, the Lord Chancellor bowed first to the bishop who had read prayers, then to the other lords, [3] after which he took his place on the uppermost woolsack; whereupon the House was deemed to be in session. [4] Until 1742, when the Lords revoked a Standing Order of 1621, members who arrived after Prayers were to be fined for being late at the rate of a shilling if a baron or bishop, and two shillings if of a more senior rank; the proceeds went to the Poor's Box. [5] The conclusion of Prayers was the proper time for new peers to swear the oaths and take their seats in the House. [6]

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1. Harrowby MSS., document 35(q).
2. On Saturday 2 April 1709, Bishop Nicolson suffered a 'fall from the corner of the throne, just before my reading of prayers'. On the first occasion of performing this duty, Friday 20 November 1702, he was 'kindly cautioned by the Archbishop of York about the pronunciation of Jesus'. H.L.R.O., Historical Collection 45, Nicolson Diaries, part x, 2 April 1709; part i B, 20 November 1702. On 28 January 1689 the House set a precedent whereby Prayers could be suspended if no bishop was present. H.L.R.O., Historical Collection 251, Precedent Book, f.234.
3. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.2
4. Harrowby MSS., document 35(q).
5. Standing Order No.9 (1621 and 1626, vacated 13 May 1742). No evidence has been found of its enforcement.
6. E.g., L.J., xx, 31 (1715); xxxii, 416 (1770).

The business of the day began with the hearing of legal causes appointed for that day. Until 1742 the first of these was to be brought on 'precisely at eleven o'clock',[7] but in that year the Order was altered to be the first business after Prayers. The original Order, made in 1715, elaborated and strengthened a negatively worded rule of nine years earlier, forbidding any private legislation to be taken into consideration before the legal causes appointed for that day.[8]

Next came private business, and there was always a great deal of it awaiting their lordships' decision. Private business comprised the presentation of petitions, judges' reports on petitions, the delivery of papers requested, and the various stages of private legislation. Proceedings on these were on the whole a formality, particularly when they were not contested; debates and divisions rarely occurred on any matter arising from them, though this was not impossible, especially if they fell on a day on which there was a large attendance drawn by an issue of great public importance.[9] Thus, though the volume of private business was large, it did not consume a great deal of the Lords' time - perhaps an hour or two. In practice, legal and private business tended to intermingle haphazardly, especially as the session wore on and the amount of business in the Lords increased.[10]

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7. Standing Order No.62 (28 June 1715, amended 13 May 1742).
8. Ibid., No.97 (18 January 1706).
9. E.g., Draycot's petition about a will, and the motion 'to commit' the Mutiny Bill, 18 February 1718 — L.J., xx, 614; Parl.Hist., vii, 538-9. To appoint a date for the second reading of the Lying-in-Hospitals Bill, and the third reading of the East India Regulating Bill, 19 June 1773 — L.J., xxxiii, 679-82.
10. E.g., ibid., xx, 365(1716), 612(1718); xxxi, 23-24(1765); xxxiv, 309-10,349-50(1775).

This was attributable to the manner of initiating all business in the House, for the order in which matters were brought on depended on the order in which they were proposed from the floor by the peers themselves.[11]

If no further unnotified motions were forthcoming, the Lords proceeded to consider the Orders of the Day. These were usually important items of public business. Contemporary remarks suggest that before doing so the assembly, occasionally, may have adjourned during pleasure, though the Journals do not appear to note these instances. These adjournments gave peers an opportunity to converse and move freely around the chamber. Bishop Nicolson took advantage of one such adjournment in 1703 to seek subscriptions for a publishing venture in which he was interested.[12] In the interval between ordinary business and the Orders of the Day on 7 February 1782,[13] Lord Chancellor Thurlow sought to dissuade the Marquess of Carmarthen from moving a resolution declaring the elevation of one who had suffered the censure of a court-martial to be derogatory to the honour of the House. The motion against Lord George Germain was disposed of by a motion to adjourn immediately, which was carried by 75 votes to 28.[14] The purpose of such adjournments may have been to allow time for a larger attendance of peers to muster.[15] When the final

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11. E.g., Harrowby MSS., document 35(q), 19 November [1754].
12. H.L.R.O., Historical Collection 45, Nicolson Diaries, part 2A, 14 January 1703.
13. The only Order of the Day considered was for a Committee of the Whole House to take into consideration the loss of the army under Earl Cornwallis. L.J., xxxvi, 382.
14. Leeds Memoranda, pp.53-4.
15. See infra., p.343.

Order of the Day had been discussed, unless postponed by the will of the House to another date, the Lords could once more resume consideration of any business proposed from the floor.[16] If none arose, the Lord Chancellor brought the sitting to a close by declaring the House adjourned to the next sitting day.[17]

This was the pattern of a day in the House of Lords throughout the period of this study. It was a period which witnessed the culmination of a protracted process which transformed the chronological format of the Parliamentary working day, abandoning the archaic scheme of separate morning and afternoon sittings in favour of the more modern practice of one daily session commencing in the afternoon and continuing in the evening.[18] By Queen Anne's reign, the formal hour for convening the House had become regularised to eleven o'clock in the morning,[19] and this remained the hour to which the House stood adjourned, according to the Journals, throughout the eighteenth century. During the emergency session of August 1714, caused by the death of Queen Anne, the House of Lords however always adjourned to twelve midday of the next sitting day. The first Hanoverian Parliament met on 17 March 1715, at the close of which Lord Chancellor Cowper adjourned the House to eleven o'clock four days later.[20] The Journals provide no evidence of a resolution of the House in favour

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16. E.g., L.J., xx, 489-90(1717); xxxi, 406-7(1766).
17. See infra., p.509.
18. The original pattern could still be followed on the odd occasion; for example, 5 December 1763, L.J., xxx, 435.
19. H.L.R.O., Historical Collection 45, Nicolson Diaries, part 1 B, 24 November 1702; L.J., xvii, 172.
20. Ibid., xx, 22.

of this experiment, nor of one to return to the previous practice. It may, however, have been an attempt to make the offical procedure of the House consonant with actual practice.

There ought in theory to have been no problem of forming a House in the Upper Chamber of Parliament, since the quorum of the Lords was only three. But the problem of attaining a regular and respectable attendance of members early in the day appears to have been insuperable. When the Earl of Halifax called for the Standing Orders prohibiting the legal officers of the Crown from representing persons at the Bar of the Lords, and that appointing causes to be commenced at eleven o'clock, to be read on 6 April 1742, Lord Chancellor Hardwicke's reply shed considerable light on the actual practice of the peers:[21]

> The [Lord] Chancellor said if that was meant as a compliment to him he was glad of it, for he loved early hours. But as the business of Chancery must be carried on he hoped he should not attend without such a decent number as that he could go on with business; that great causes were determined by two or three spiritual and as many temporal lords, which did not do honour to that judicature which was the principal support of the House.

Hardwicke was simply confirming a comment made by Earl Cowper[22] twenty years earlier, in the debate of 27 February 1722 when the Earl of Sunderland moved that Protests against the decisions of the House ought

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21. B.L.Add.MS.6043, f.119. See also Timberland, History, viii, 111.
22. As Lord Cowper, he sat on the woolsack from May 1707 to September 1710, and again from September 1714 to April 1718. He was created an earl on 18 March 1718.

to be entered in the journals before two o'clock in the afternoon of the next sitting day, and that peers should sign them before the House rose. Cowper objected strongly to the proposal on the grounds that 'the time being so short, and very few lords coming so early, such an order would, in effect, put an end to all protesting, which was an ancient privilege of that House'.[23] The resolution, however, was approved by 48 to 18, and on 3 March it was made a new Standing Order, replacing that of 1642 which had permitted Protests to be entered at any time during the next sitting day.[24]

Some evidence exists, however, which indicates that the House of Lords in the early part of the period did meet either before or about midday. On 3 February 1722, Lord Chancellor Macclesfield was detained in a council meeting at St.James's Palace, and consequently failed to arrive to convene the Upper Assembly until almost three o'clock.[25] After hearing his apology, an unsuccessful motion was made to adjourn immediately as a demonstration of the House's indignation at the incident. The Protest entered in the journals claimed that several peers had been present since eleven in the morning,[26] while other contemporary reports noted that members had been kept waiting for over two hours.[27] If so, the earliest hour at which the House would

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23. Parl.Hist., vii, 974.
24. Standing Order No.87 (5 March 1642), replaced by Standing Order No.114 (3 March 1722). For this practice of the Lords, see infra., pp.447-52.
25. Anthony Lowther, brother of Viscount Lonsdale, thought it was nearer four in the afternoon. H.M.C. Lonsdale MSS., p.123.
26. L.J., xxi, 672-3.
27. Timberland, History, iii, 225; Torbuck, Debates, viii, 213.

have met would have been at noon. On Thursday 17 February 1726, the Lords voted an Address of Thanks to George I for laying before the House the treaties made with Spain and Prussia.[28] The minority on this occasion, however, were deprived of an opportunity to enter a Protest against the order because the House rose the next day before two in the afternoon, that being the hour appointed by the King for receiving the Lords' Address of Thanks.[29] Hence, on Monday 21 February the House granted special leave to those peers who wished, to protest:[30]

> ORDERED, That in regard this House did not continue sitting till two a clock on Friday last, such lords as voted for an addition to the resolution for the Address to his Majesty the day before, or were against agreeing to the said resolution, and Address thereupon, have liberty to enter their Protests at any time before tomorrow at two of the clock.

However, the lords concerned took no advantage of this order.[31] The sitting of 25 March 1763 was dominated by a legal hearing which did not end until a quarter-to-four, and which in all probability had begun about one, the hour that Lord Hardwicke arrived at the House.[32] Prior to the cause, the House had received six bills from the House of Commons and given a first reading to three, while four other pieces of legislation had been read a third time and sent to the Lower House. Despite the high number of bills involved, the

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28. L.J., xxii, 597-8.
29. Ibid., pp.598-9.
30. Ibid., p.601.
31. A similar incident occurred at the commencement of the 1775 session of Parliament. See infra., pp.448-9.
32. B.L.Add.MS.6043, f.311.

proceeding on each was mere formality, which suggests that the House need not have convened earlier than midday.[33]

There is but one debate which is known to have commenced early in the morning and in accordance with the Journals constant claim that the House met at eleven. The event was the appeal hearing of the Hamilton v Douglas peerage case. The final day's proceedings in the Lords occurred on 27 February 1769, and the debate which began 'a little after 11 A.M., finished a little after nine'.[34] The general trend suggested by the evidence, however, is to a later start to business, and the incident of 1769 may have been an exception, a deliberate attempt to start early on a day when a long debate was expected. This appears to be confirmed by the orders issued by the House at the commencement of every session to prevent stoppages in the streets in the vicinity of Westminster Palace. At the start of the period, the restrictions were imposed between eleven in the morning and three o'clock in the afternoon,[35] but were extended to four o'clock in 1715,[36] and to five o'clock in 1726.[37] On 24 March 1762, this order was vacated and replaced by one imposing restrictions in the area from Whitehall to Abingdon Street between noon and five o'clock, and from Pall Mall to Old Palace Yard from one in the afternoon till the rising of the House.[38]

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33. L.J., xxx, 374-6.
34. Bedford Journal, i, 618.
35. L.J., xx, 8.
36. Ibid., p.134.
37. Ibid., xxii, 577-8.
38. Ibid., xxx, 207.

The first official recognition of the trend to a later hour of meeting may have been the Order of 1742 appointing legal causes to be considered first after Prayers and not precisely at eleven.[39] By the reign of George III, the House appears to have been proceeding to public business around two in the afternoon. On 13 May 1765, George Grenville, the First Lord of the Treasury and, on this occasion, the Commons' messenger to the Lords,[40] delivered the Regency Bill and the Commons' amendments to the Upper House at 2.20 p.m.[41] Prior to this, business in the Lords had comprised the third reading of seven private bills and the consideration of the resignation of Joseph Wight, the Clerk Assistant. The presentation of the Regency Bill appears to have marked the commencement of public business.[42] Business on 22 June 1767 was composed entirely of Orders of the Day, which the House proceeded to consider immediately after Prayers. Six legislative measures were committed and their reports received, East India Company papers were delivered and their titles read, and the Committee stage of two other bills postponed before Earl Temple rose, shortly after three o'clock, to move for further documents and accounts of the Company.[43] This matter was briefly discussed and Mr. Rous, the Chairman of the East India Company, was summoned as a witness before the House proceeded to the major issue of the day , the Committee of the Whole House on the East India Dividend Bill.[44]

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39. See supra., p. 340.
40. See infra., pp.524-5.
41. B.L.Add.MS.51423, f.177.
42. Ibid., ff.176-9; L.J., xxxi, 200.
43. Parl.Hist., xvi, 347 n ; L.J., xxxi, 644-6.
44. Parl.Hist., xvi, 347-50, and n. ; L.J., xxxi, 646.

The later start to public business is substantially supported by the time noted for the arrival at the House of Lords of peers who usually took an active part in its proceedings. At one o'clock on 13 December 1763, the Marquess of Rockingham wrote a note to the Duke of Newcastle mentioning his intention of going to the Lords, but promising to visit him at three, implying that he would not stay at the Duke's residence for long as he had company for dinner.[45] A busy day was expected in the Lords on 24 June 1767 for among the business ordered for that day was the third Committee session of the East India Dividend Bill and the Committee stage of the East India Agreement Bill. Therefore, Charles Yorke, who had planned to visit the Duke of Newcastle at one o'clock, 'judged it better not to trouble you with a visit, before you went to the House of Lords'.[46] In the event, he might as well have done so for the only business conducted by the House that day was the perfunctory first reading of a Bill to discontinue the duties on black and singlo teas, and the receiving of copies of the East India Company's charters which, according to the Journals, took place immediately after Prayers, all other items being postponed to the next two days.[47]

Lord Grantham,[48] though not feeling well, as he assured Newcastle, attended the House between two and half-past seven on 10 December 1766 so as to give an account of the debate on the second

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45. B.L.Add.MS.32953, f.301.
46. Ibid., Add.MS.32982, f.404.
47. L.J., xxxi, 649-50.
48. Sir Thomas Robinson, appointed Secretary of State for the South by Newcastle in 1754, had been created Baron Grantham on 7 April 1761.

reading of the Indemnity Bill. Though preceded by legal and other legislative matters, among which was the third reading of a Malt Bill, the Indemnity Bill was the only Order of the Day before the House, and after its conclusion the Lords adjourned.[49] The Duke of Richmond begged the Marquess of Rockingham to be at the House of Lords by two o'clock on 12 December 1768 as the message from the Commons, requesting a conference on the matter of peers attending the Lower House as witnesses, was expected to be delivered 'the moment Prayers are over'.[50] The Journals indicate that a few items of routine business were dealt with before the Commons' message was received.[51] In a note to the Duke of Portland dated 2 February 1770, the Duke of Devonshire expressed the hope of seeing him at the House of Lords at half-past one that afternoon, 'if you mean to be there so soon, but desire you would not go sooner than is convenient to yourself'.[52] This was the occasion of the Lords' debates on the jurisdiction of the House of Commons on election issues. Both peers participated in the division in the Committee of the Whole House on the motion to resume the House, which took place at midnight,[53] but there being no known division list on the second resolution, it cannot be said with certainty that both were present at two o'clock on the morning of 3 February when the House rose after a very long session. Lord Mansfield, anxious to see the Duke of Portland, sent him notification on 13 June 1774 of where he could be

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49. B.L.Add.MS.32978, f.262; L.J., xxxi, 447-8. For another example, see B.L.Add.MS.32948, f.126(1763).
50. Wentworth Woodhouse Muniments, R 1-1129.
51. L.J., xxxii, 198-9.
52. Portland Papers, PwF 2695.
53. Debrett, Debates, v, 162-3.

found next day: from nine in the morning until two in the afternoon he would be engaged in his office as Lord Chief Justice of the King's Bench in Westminster Hall, and from two until four he would attend the House of Lords.[54]

On the second day of the new Parliament in November 1780, an incident occurred which demonstrated the personal inconvenience and problems that could be caused to peers who habitually attended the House in mid-afternoon, if they forgot the procedures and rules of Parliament. The debate on the Lords' Address in Reply to the King's Speech must have commenced at or after four o'clock on Wednesday 1 November 1780, for when several members of the peerage — including the royal princes, Gloucester and Cumberland, the Dukes of Dorset, Devonshire, and Richmond, the Marquess of Carmarthen, the Bishop of Peterborough, and the senior household peers, Earl Talbot and the Earl of Hertford, and some others , entered the chamber to take the oaths so as to be able to participate in the debate, doubt was cast on their entitlement to do so, because the hours imposed by the Act of Parliament[55] within which peers should be sworn, namely, between nine in the morning and four in the afternoon , had already passed.[56] This was supported by a Standing Order of the Lords.[57] A motion to adjourn the House because of the disqualification of the members was found objectionable on the grounds that it set a precedent

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54. Portland Papers, Pwf 7054.

55. 30 Charles II, c.1 (stat.2) — see Statutes of the Realm, v, 894-6. Clause iv of the Act disqualified peers sitting in the House without having taken the oaths from voting during the remainder of the Parliament.

56. E.g., peers taking the oaths in 1727. Lord King, The Life of John Locke, ii, Appendix ii, 36-7.

57. Standing Order No.92 (19 March 1679).

which might be taken advantage of again to terminate prematurely the proceedings of the House. The Earl of Mansfield, thereupon, drew their lordships' attention to a clause in the Act which permitted the House to exercise its judgement and to order peers to be sworn whenever it pleased: an expedient which was adopted immediately.[58] This incident remained a live issue within the peerage for days afterwards. The Duke of Portland, not convinced by Mansfield's interpretation of the Act, studied the statute for himself until sure of the rectitude of the course taken, and he assured Rockingham that there was no cause to fear there having been an 'offence against the law of the land'.[59] He was also positive in his own mind that, as a result of the episode, there could be no objection to 'repealing the absurd part of the Statute of Charles 2[d] which has created this alarm'.[60] There is also cause to believe that a similar incident had occurred on the opening day of the session, on 31 October 1780; for Portland, in his letter of 4 November to Rockingham, further recommended that 'as to what happened on Tuesday', those 'as are not satisfied with having taken the oaths within the hours prescribed' should do so again at the next sitting of the House.[61] In the meantime, the Marquess of Rockingham had consulted the Lord Chancellor, Thurlow,on the matter, so that in his reply of 5 November 1780 to Portland, Rockingham advised that 'it is best to let it pass at

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58. Statutes of the Realm, v, 895, clause iv. L.J., xxxvi, 183; B.L.Add.MS.35617, f.94; Debrett, Parl.Register (2nd.ser.), iv, 5.

59. Wentworth Woodhouse Muniments, R 1-1937 (4 November 1780).

60. Ibid.

61. Ibid. The Journals also show that 17 peers were recorded present who failed to take the oaths at all on 31 October 1780, 8 of whom were among the 39 who were given special leave to do so on 1 November. L.J., xxxvi, 178-9,183.

present - sub silentio'. [62]

By the second half of the century, morning meetings of Parliament were, in general, held only on formal occasions. The Bishop of Norwich hoped to see the Duke of Newcastle soon after ten on the morning of 8 November 1768 because of the necessity of his getting to 'the House of Lords as soon as possible, having undertaken to be chaplain there for the Bishop of St.David's who is not come to town'. [63] He need not have been so anxious, for not only was Robert Lowth of St.David's present at the state opening of Parliament, but so were three other bishops of more recent appointment than Norwich. [64] George III clearly preferred the early hours for formal business. The ceremony of opening the 1763 session took place around midday on 15 November 1763; [65] eighteen months later, he again favoured that hour for terminating the 1764-5 Parliamentary session. His itinerary on 25 May 1765 was noted by Mrs. Grenville as follows: 'The King came to town at eleven, went to the House of Peers to prorogue the Parliament at twelve, and returned at one to Richmond, and saw none of his Ministers'. [66] If left to the determination of individuals, however, there was no regular time for performing these functions: Sir Dudley Ryder who sat as Speaker of the House of Lords during the summer of 1755 for the purpose of proroguing Parliament, attended the House on 23 September at half-past one in the afternoon. [67]

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62. Portland Papers, PwF 9147.
63. B.L.Add.MS.32991, f.405.
64. L.J., xxxii, 164.
65. Grenville Papers, ii, 243.
66. Ibid., iii, 190.
67. Harrowby MSS., document 35(q), 23 September 1755.

Lord Chancellor Camden preferred an earlier hour, and to the Duke of Grafton expressed his desire of conducting the prorogation on 7 October 1767 at eleven in the morning, and that his Grace would make the necessary preparations.[68] The later hour of meeting of both House of Parliament as the century progressed did, however, cause a change in the King's time-schedule also. Whereas in 1764 George III could appoint one o'clock as the hour at which he would attend to give the Royal Assent to legislation on Thursday 5 April,[69] by 1782 Lord Shelburne could only confirm that on 22 December 1782 'The Chancellor and Speaker have both promised to be at the respective Houses at one o'clock, and I hope that proper care will be taken to get Members enough to go down in due time to be ready for Your Majesty any time after two o'clock'.[70]

Some contemporary evidence also invites the interpretation that the House of Lords was not always consistent in its time of meeting. On 13 November 1775, Brownlow North, Bishop of Worcester and brother of the Prime Minister, Lord North, went to the House of Lords 'at the usual time' only to find that the assembly had already adjourned.[71] Peers absent at Prayers could occasionally be disappointed to find that the affair in which they were interested had been dispensed with in their absence. This was the case on 3 May 1765 when, immediately after Prayers, the Lords proceeded to the Order of the Day for further consideration of the Regency Bill. It was decided to recommit the measure and in a Committee of the Whole House the notorious amendment omitting the name of the Princess Dowager from

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68. Grafton Autobiography, p.161.
69. Grenville Papers, ii, 284.
70. Fortescue, Corr. of George III, 185.
71. MSS.North, d.25, f.61.

the regency was approved, and then reported to the resumed House.[72] Horace Walpole, chronicling the incident in later years, observed that 'it being early in the day, several lords and others, whose curiosity was carrying them to see the conclusion of so interesting a scene, met the Ministers returning from the House with exultation at their success'.[73] What remained for those who were left in the House was only the receiving of more legislation from the Commons and various stages of undisputed measures.[74] The Marquess of Carmarthen noted that the Lords met early on the day that Lord George Germain was introduced as Viscount Sackville, Tuesday 12 February 1782, probably to avoid further controversy, and shortly after adjourned for two days.[75]

The preceding references to early meetings, especially those from the latter part of the period, ought not necessarily to be understood to imply morning sessions of the House, for sources indicate that, in the last quarter of the century, the House was convening at a later hour. On 12 February 1771, the Duke of Richmond sent a hurried note to his party leader, the Marquess of Rockingham, and enclosed a proxy for him to sign. He begged the Marquess not to delay the messenger longer than necessary as weather conditions already forced him to travel slowly, and 'I must have the proxy by 12 o'clock on Thursday to get it entered before Prayers'.[76] The

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72. L.J., xxxi, 174.
73. Walpole, Memoirs of George III, ii, 88.
74. L.J., xxxi, 175-7.
75. Leeds Memoranda, p.55; See also supra., p.341.
76. Wentworth Woodhouse Muniments, R 1-1358; Standing Order No.85 (16 January 1703). On Thursday 14 February 1771, the Opposition's amendment to the Address of Thanks following a consideration of the Falkland Islands issue was defeated by 92 votes to 35 and by 15 proxies to 3. L.J., xxxiii, 65-7; Sainty and Dewar, Divisions.

Standing Order for entering proxies was not changed until 1813 when the limit of three o'clock in the afternoon was imposed.[77] At the time that Richmond was writing, the Journals continue to claim that the House stood adjourned to eleven in the morning on the next sitting day, but the Duke's letter implies that, in practice, Prayers would not have been said until noon at the earliest.

Other evidence, however, suggests that the Lords were meeting even later than this. The Marquess of Rockingham was particularly anxious to attend the Select Committee on the Aire and Calder Navigation Bill on 2 June 1774. After the Bill's second reading on 31 May, the Journals recorded that the Committee should meet in the Prince's Chamber 'on Thursday next, at ten o'clock in the forenoon';[78] yet Rockingham was certain that the Committee was appointed for one o'clock in the afternoon.[79] Select Committees could not meet during the sitting of the House;[80] furthermore, the Committee's report on the Navigation Bill was the second item of business after Prayers on 2 June,[81] so that on Rockingham's evidence the House could not have convened until about two o'clock. Horace Walpole also considered 'two in the afternoon' as the hour 'to save the nation, and govern the House of Lords by two or three sentences as profound and short as the Proverbs of Solomon'.[82] Samuel Wilde, a clerk at the Exchequer, made his first visit to the Upper House of Parliament on 25 May 1778, and sent an account of the proceedings to the second

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77. L.J., xlix, 413 (19 May 1813). The Journals, however, continue to state that the House met either at ten or eleven in the morning.
78. Ibid., xxxiv, 221.
79. Portland Papers, PwF 9083.
80. See infra., p.464.
81. L.J., xxxiv, 227.
82. Walpole, (Yale) Correspondence, xxxii, 191.

Earl of Hardwicke. He arrived at the House at three, but the assembly did not proceed to business until half-past three and, within half an hour, gave a second reading to each of three bills. At four o'clock, the Lords turned their attention to the main interest of the day, namely the inquiry arising from papers concerning the equipping of the Toulon fleet. Wilde was obliged to withdraw when one of the resolutions proposed regarding the navy was forced to a division, but the Lords continued to sit after the debate, at least long enough to receive bills sent up from the Commons, which were immediately given a formal first reading.[83] On Wednesday evening 30 January 1782, Lord Rockingham made arrangements to meet the Duke of Chandos at the House of Lords next day between two and three in the afternoon, suggesting no precise time since 'any time before three o'clock will afford us time for the honour of some conversation together'.[84] Both Rockingham and the Duke of Richmond planned to be 'early' at the House on 31 January, for Richmond intended to summon the Lords for Monday 4 February on the American question,[85] which he did at the end of an uneventful day in the House, where business had comprised the early stages of appeal causes and the receiving of petitions for private legislation.[86]

The most accurate guide for determining the hour of convening the Upper House, however, must be the practice of the Lord Chancellor who acted as its Speaker. Evidence on this point, however, is available only for the latter part of the period. On 9 June 1779,

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83. B.L.Add.MS.35614, ff.239-40; L.J., xxxv, 502-3.
84. Buckingham, Courts and Cabinets, i, 20.
85. Ibid., pp.19-20; L.J., xxxvi, 380-1.
86. Ibid., pp.378-9.

Lord Thurlow wrote to Charles Jenkinson[87] desiring to know his thoughts on the Militia Bill. The Lord Chancellor agreed to meet him whenever convenient, but added that 'We [the House of Lords] meet at three o'clock'.[88] The East India Judicature Bill passed through its stages in the House of Lords in early July 1781, though not without amendment.[89] Edmund Burke was consulted about these changes and, on 10 July, received a note from Lord Rockingham to inform him that Lord Chancellor Thurlow would 'be at his room at the House of Lords tomorrow as soon after 1 o'clock as he can'.[90] According to another source, the House was put into a Committee on the Bill at half-past four on the afternoon of 11 July;[91] prior to this, a few peers had taken the oaths,and other legislative measures had been returned from the Commons, neither of which would have necessitated the House meeting earlier than half-past three.[92] Viscount Townshend's note to the Earl of Buckinghamshire, written from the House of Lords on 21 February 1782, bore no sign of annoyance at the Lord Chancellor's continued absence, though it was gone three o'clock, and that he would not have an opportunity to make his intended motion for some time after the House would convene.[93] Less than two hours later, Townshend could report that

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87. Charles Jenkinson was Secretary of War in the North Ministry from 1778-82. In June 1786 he was raised to the peerage as Baron Hawkesbury, and ten years later was created Earl of Liverpool.

88. B.L.Add.MS.38192, f.123.

89. L.J., xxxvi, 355-6,357,360.

90. Burke Corr., iv, 355.

91. Debrett, Parl.Register (2nd.ser.) iv, 396.

92. L.J., xxxvi, 354-5.

93. H.M.C. Lothian MSS., p.411.

an alternative method had been found for obtaining the papers which Earl Cornwallis wished to be put before the House.[94] What procedure was agreed upon he did not reveal; but no motion having been made, the Lords' minutes for that day contain no reference to the issue.[95] Nevertheless, on 25 February 1782, two sets of papers relating to the surrendered forces in America were laid on the Table in the Lords: the first was in response to an Address of the House on 18 February; the second was delivered by Viscount Stormont 'by His Majesty's command', and was probably the result of the agreement arrived at by Government and Opposition on 21 February, which had made Townshend's motion superfluous.[96]

One explanation for the gradual postponement of the hour for daily convening the House was the pressure of ministerial duties. Throughout the eighteenth century, most of the important offices in government were held by peers who, therefore, played a leading role in the effective Cabinets of the time. Privy Council business was commonly transacted in the mornings. So were a minister's private meetings with the King. Lord Rockingham concluded his letter giving an account of the Lords' debate of 3 February 1766 with a request for 'permission to attend tomorrow morning, before the House of Lords meet'.[97] George III replied that 'as the House will probably meet early, I think a little after twelve the best time for your coming tomorrow'.[98] It also became customary in both Houses to

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94. Ibid.
95. L.J., xxxvi, 394-5.
96. Ibid., pp.389,396-8.
97. Fortescue, Corr.of George III, i, 253.
98. Ibid., p.294.

await the arrival of ministers before entering into the public business appointed for that day.[99] Furthermore, shortly after his appointment as Lord Chancellor in January 1761, Lord Henley availed himself of the new King's favour to request the suspension of evening sessions in the Court of Chancery on Wednesdays and Fridays. When asked for a reason, Henley replied 'that I may be allowed comfortably to finish my bottle of port after dinner'.[100] It seems reasonable to assume that the consequence was longer morning sessions in Chancery, so that it would be unlikely that the Lord Chancellor would be free to commence sittings in the Lords before early in the afternoon.

The early dinner hour of the period, between three and five, originally meant that few sittings lasted for much longer than that hour. But with the later start to the Parliamentary day, many politicians found it wiser not to set out for the House and 'for the field of battle [until] well replenished with...dinner'.[101] The Earl of Egmont who, by virtue of being an Irish peer, was incapacitated from sitting in the Upper House, was one who regularly went to observe the Lords at work, after having dined himself.[102] Protracted sittings inevitably meant that peers would have to wait well beyond the normal dinner hour before being free to satisfy their appetites; that is, unless they were prepared to leave the assembly temporarily and risk missing a division.[103] This, however, may well have been

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99. Infra., p.425.
100. Campbell, Lord Chancellors, v, 199.
101. P.R.O., 30/8/62, f.149 [undated].
102. H.M.C. Egmont Diary, ii, 272,359.
103. See infra., p.459.

normal practice; not even the Duke of Newcastle was averse to doing so,[104] though his correspondence also reveals his intention and practice of quitting the House at a late hour and then dining with fellow members of the Opposition.[105]

Late hours became a common feature of Parliamentary life in the latter part of the period, being in particular a result of the pressure of business and longer debates arising from the American war. Contemporary sources are full of references to long days and late hours in the House, and to the fatigue and taxing effect which this had on the health of peers.[106] Most, however, fail to indicate the length of time involved, though many do specify the hour at which a debate was drawn to a conclusion,or that the House adjourned. From this information, it emerges that the usual time at which the Lords rose after a heavy day in the House changed from between six and seven o'clock during the first three Hanoverian decades to between eight and eleven o'clock in the 1770s and 1780s.[107] But without more conclusive evidence to support the previously made tentative

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104. E.g., B.L.Add.MS.32982, f.196 [1767].

105. E.g., ibid., f.352(1767).

106. E.g., ibid., f.113(1767); Add.MS.32966, f.391(1766).

107. E.g., on 11 March 1718, after a three-hour debate on the third reading of the Forfeited Estates Bill, the House rose at 7 o'clock (Torbuck, Debates, vii, 70). The Committee of the Whole House inquiry on the Oxford riots lasted till 6 o'clock, 3 April 1717 (Timberland, History, iii, 50). The debate on the Queensberry peerage case on 14 January 1720 continued until 7 o'clock (H.M.C. Portland MSS., v, 591). On 29 March 1732, after an uneventful day apart from the debate on the instructions proposed for the Committee on the Salt Bill, the House adjourned at six in the evening (London Magazine (1732), p.452). In comparison, on 28 March 1774 the House rose at 10.20 p.m. (Fortescue, Corr. of George III, iii, 86), but on 9 December 1783 it adjourned at around nine o'clock (ibid., v, 474). The debate of 1 February 1775 on the Provisional Bill for settling the troubles in America lasted until about ten at night (Almon, Parl.Register, ii, 33), but that on the Ilmington Enclosure Bill, 30 March 1781, was concluded when the question was put at nine o'clock (Debrett, Parl.Register (2nd. ser.) iv, 230).

suggestions as to the hour of meeting in the Lords, no opinion can be offered as to whether this also meant a longer sitting day in normal circumstances.

The precise time for commencing and concluding business in the Upper House is known for only a few days in the period 1714-84, and from which the length of the sitting can be surmised. The debate at the second reading of the Septennial Parliaments Bill lasted from two until seven o'clock on 14 April 1716. This was the last business of the day, and if an hour is allowed for the conclusion of private business, a sitting of about six hours can be estimated.[108] The Lords' debate on the Mutiny Bill, 20 February 1718, centred on the instructions to be given to the Committee, and similarly spanned from two until seven; reports on the time that the House rose vary between eight and nine in the evening.[109] The day's session, however, had necessarily commenced before two o'clock in order to dispose of private business.[110] The second session of the Lords' inquiry into the Walpole Government's management of South Sea Company affairs was brought to an end with a division shortly after half-past nine in the evening on 1 June 1733; it had begun at one'clock in the afternoon, but the House must have convened some time earlier in order to deal with routine matters.[111] At one o'clock on the morning of 14 February 1741, the House of Lords rose after a very

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108. Torbuck, Debates, vi, 380,396; L.J., xx, 332-3.

109. Timberland, History, iii, 78; Torbuck, Debates, vii, 49,56; H.M.C. Stuart Papers, vi, 106.

110. L.J., xx, 616-9.

111. H.M.C., Carlisle MSS., p.118; L.J., xxiv, 291-3.

long sesssion which had been dominated by the censure motion against the Prime Minister, Sir Robert Walpole.[112] The House was in debate on this issue for eleven hours,[113] and had probably met an hour or two earlier in order to have completed the preceding business.[114] This occasion had been forgotten by the time of the third Hanoverian reign. The motion of 11 March 1766 to commit the Stamp Act Repeal Bill was debated in the Lords from three in the afternoon till eleven at night.[115] Contemporaries estimated, however, that the House sat in all 'between eleven and twelve hours, which is later than ever was remembered'.[116] According to one source, the House sat till eleven o'clock;[117] according to another, the sitting lasted till midnight.[118] Much formal, legislative business was completed prior to proceeding to the Order of the Day on the Stamp Act Repeal Bill, which suggests that the House may have deliberately met in the morning on an occasion when a long debate was expected.[119] The debate on the Repeal Bill might be regarded as the occasion that set the trend for the later sittings that became a feature of Parliament during the years of the War of American Independence. Thus, appropriately, the latest meeting

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112. B.L.Add.MS.6043, f.86; H.M.C. Egmont Diary, iii, 191.
113. 2nd.Lord Hardwicke, Walpoliana (1783 ed.), p.15, cited in Turberville, The House of Lords in the Eighteenth Century, p.247 n.1.
114. L.J., xxv, 594-7.
115. B.L.Add.MS.33035, f.396.
116. Chatham Corr., ii, 384 n.
117. B.L.Add.MS.51406, f.136.
118. Fortescue, Corr. of George III, i, 280.
119. L.J., xxxi, 300-5. See also the occasion of the Douglas peerage case, 1769, supra., p. 346.

of the whole period was that of 17 February 1783 when the Shelburne Government put before both Houses of Parliament its peace proposals for concluding the American war. In the House of Lords, the peace preliminaries were brought on at four in the afternoon, and approved by a narrow majority of 69 votes to 55 (plus proxies of 3 and 4, respectively) at half-past four on the morning of 18 February. [120]

There had been previous instances of Lords' proceedings continuing into the early hours of the next morning. For example, the debate on the question to commit the Earl of Oxford to safe custody,after the Commons' articles of impeachment against him had been presented, extended the sitting of 9 July 1715 until a quarter-past one the following morning. [121] The attempt to define the House of Commons' jurisdiction on electoral matters on 2 February 1770 gave rise to a debate that continued until the Lords adjourned at two in the morning the next day, [122] which, in Horace Walpole's opinion, was 'an hour scarce ever known in that House'. [123] Nevertheless, it was repeated on 7 February 1775 when the Lords debated a loyal Address concerning the colonies, [124] and because of this, the House adjourned , not to eleven the next day, but to two o'clock in the afternoon. [125] The continuation of the debate on the Address in Reply of 25 November 1779

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120. Debrett, Parl.Register (2nd.ser.), xi, 93; L.J., xxxvi, 597-9.
121. Timberland, History, iii, 14.
122. Debrett, Debates, v, 168; the question was put at 1.30 a.m., Chatham Corr., iii, 420 n.
123. Walpole, Memoirs of George III, iv, 58.
124. Almon, Parl.Register, ii, 34-60; Chatham Corr., iv, 398-9.
125. L.J., xxxiv, 306.

until half-past one the next morning, when the House divided on the question, provoked a contemporary observation upon the 'very uncommon length of the debate'.[126] Sittings of such protracted length, however, were, and remained throughout the period, the exception rather than the rule. For the most part, business in the House of Lords could be completed within a few hours.[127] If any Orders of the Day remained outstanding at the conclusion of a lengthy debate, it was customary to postpone these items to another day; there are numerous examples of this practice in the Lords Journals.[128] For despite the trend to later sittings, it remained a generally observed maxim that the Lords disliked conducting business at such late hours, and would naturally, therefore, be averse to enter into new business late in the day.[129]

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126. Almon, Parl.Register, xv, 78.

127. E.g., 8 May 1723, when proceedings against the Bishop of Rochester were in motion, the House adjourned at four o'clock (Torbuck, Debates, viii, 350). On 16 January 1766, the House rose at five in the afternoon, having dealt only with legal business all day, except for the debate before the adjournment, on the rejected motion to print papers from America; yet the Lord Chancellor used the hour of adjournment to explain his failure to attend upon the King until later in the evening (Fortescue, Corr. of George III, i, 234). Yet a few months later, George III expressed his pleasure upon hearing that the third reading of the Stamp Act Repeal Bill had passed 'so soon' on 17 March 1766 before the House adjourned at five o'clock (ibid., pp.284,285). On 10 and 11 May, and 20 June 1781, there being no important business before the House, proceedings could be transacted quickly, and the House rose at 6, 7, and 8 in the evening, respectively (Debrett, Parl.Register (2nd.ser.), iv, 270,274,332).

128. E.g., L.J., xxx, 376(1763); xxxii, 201(1768).

129. E.g., London Magazine (1732), pp.451-2.

XI

MOTIONS

All business in the House of Lords was initiated by a motion made by a peer. The practice was known as 'moving the House' or, alternatively, 'making a motion'. No evidence has been found to suggest that the Speaker of the Upper House at any time performed a duty similar to that fulfilled by his counterpart in the Commons on this point, namely, framing questions for the benefit of the House.[1] In the House of Lords, motions appear to have been made always by the peers themselves, the exact words of the motion being expressed at the end of a speech introducing the issue.[2]

At the commencement of the Hanoverian period, every motion had to be seconded by another peer if the question was to be brought regularly before the House. On 6 December 1705, during the debate on the 'Church in danger', the Lords digressed into a long discussion of the orders and procedures of the House, among them being 'the duty of the lord in the Chair to note questions as soon as seconded'.[3] The orthodox view was expressed by the Duke of Buckingham on 27 May 1717 who commented: 'That a motion is nothing of itself, unless it be seconded, and afterwards confirmed by a vote'.[4]

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1. For an account of this convention, see Thomas, House of Commons, pp.169-71.

2. There are numerous examples in the printed reports of debates, such as Torbuck, Debates; Timberland, History; The Parliamentary Register; and Parl.Hist.,

3. H.L.R.O. Historical Collection 45, Nicolson Diaries, part III B, 6 December 1705.

4. Timberland, History, iii, 54; Torbuck, Debates, vi, 479. For example: Parl.Hist., vii, 295(1719); viii, 205(1723).

Within twenty years the practice had changed, for there was by then apparently no need for a motion to be seconded. On 18 November 1740, the Duke of Argyll proposed an Address in Reply to the King's Speech which was literally a mere expression of the thanks of the House and profession of its loyalty, and a deliberate opposition to the recent practice of a lengthy address echoing the Speech from the Throne. He was followed by Lord Bathurst who, in the course of his speech articulated the new orthodoxy in the House: [5]

> I know, my Lords, it is not necessary to second any motion in this House, and therefore, I now rose up only to testify the satisfaction I received from hearing this motion made, and to declare my approbation of what the noble Duke has proposed.

The next two speakers were Lords Holdernesse and Hyndford, who proposed and seconded the Address prepared by the Government. The regularity of both motions is indicated by the subsequent proceedings of the House. It was the Lords' rule that if more than one motion was voiced during debate, a decision had first to be taken on the motion first made. [6] If the second, that is, the Government's, Address had been proposed as an amendment to the first, the question before the Lords would have been whether to agree to the alteration. [7] However, a question was stated on both motions, [8] so that the only way of taking the sense of the House on the Government's motion without first voting on the Opposition's prior motion was to move the previous question. [9] This was

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5. Timberland, History, vii, 418-9; Parl.Hist., xi, 623; B.L.Add.MS. 6043, f.28.
6. For this rule, see supra., p.75, e.g., infra., p. 378.
7. Timberland, History, vii, 424; Parl.Hist., xi, 629.
8. L.J., xxv, 537.
9. Timberland, History, vii, 424; Parl.Hist., xi, 629-30; infra., pp.376-80.

eventually put and negatived by 66 votes to 38; [10] thus the Lords came in a regular manner to consider the Government's version of the Address. Thereafter, the House of Lords appears to have allowed both practices to run concurrently, [11] and, in time, the need to second a motion fell into abeyance. [12] A motion, however, was always seconded on formal occasions such as the Address in Reply to the King's Speech. [13] Yet this did not apply to an amendment: on 1 November 1780, the Marquess of Carmarthen moved that the greater part of the Address as drafted by Administration be omitted. It was neither seconded nor opposed, but the division nevertheless took place on the amendment , the question being 'Whether the words proposed to be left out shall stand part of the motion?' [14] and was affirmed by 68 votes to 23. [15]

If the House of Lords did not impose strict rules about the making of motions, it did however impose restrictions on the type of motions to be made. The Upper House, as in the Commons, would not countenance a motion to alter or repeal legislation passed earlier in the same session. This rule applied also to resolutions of the House:

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10. Parl.Hist., xi, 690.
11. The Duke of Bolton's motion, 5 February 1762, for a resolution of the House against carrying on the war in Germany was not seconded (B.L.Add.MS.51341, ff.117-8). Compare the Marquess of Rockingham's motion to reject the Indemnity Bill at its third reading, 30 November 1775, which was seconded by Viscount Weymouth (Walpole, Last Journals,i, 497). This was the Bill to indemnify persons who advised sending Hanoverian troops to Gibraltar and Port Mahon.
12. May, Parliamentary Treatise, p.171.
13. Ilchester, Henry Fox, First Lord Holland, ii, 161-2.
14. L.J., xxxvi, 183.
15. B.L.Add.MS.35617, f.95.

immediately following the rejection on 11 June 1773 of a motion for a message to the Commons requesting reports relative to East India affairs, the Opposition made the same request again with the slight distinction of asking for copies of the reports. Objection was taken to the motion as being 'contrary to order'. An alteration in the wording of the question was not sufficient; there had to be a new objective as well. The issue was avoided by a summary adjournment of the House.[16]

Every motion had to be submitted to the Lord Chancellor or Speaker in writing.[17] On 24 February 1744, after presenting letters from the British agent in Paris concerning the intended invasion by the Young Pretender, the Duke of Newcastle, then Secretary of State for the Southern Department, did not make the usual motion for an Address of Thanks on the grounds that His Majesty had received assurances of the House's loyalty and affection in another recent Address. An emotional Earl of Orford,[18] however, insisted on the propriety of Addressing the Crown, to which Newcastle acquiesced:[19]

> so without more speaking the Lord Chancellor took pen and ink and Lord O[rford] going to him, they soon drew up a strong address which was unanimously agreed to...The Prince [of Wales] and Duke [of Cumberland] were both in the House. The Prince sat by the Lord Chancellor and looked over the address as he drew it.

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16. L.J., xxxiii, 669-70; see infra., pp.371-3.

17. E.g., B.L.Add.MS.22263, f.79, 'A motion made to the House of Lords by the Earl of Strafford' [20 April 1726], L.J., xxii, 649; Wentworth Woodhouse Muniments, R 1-1279 [2 February 1770] c.f. L.J., xxxii, 418.

18. This was the ex-Prime Minister, Sir Robert Walpole. See supra., p.33.

19. N.L.W. MS.1352, f.219. For an account of the whole incident, see ibid., ff.217-9; L.J., xxvi, 320-2.

Once a motion had been submitted to him in writing the Lord Chancellor read it to the House and proposed that 'the motion be agreed to',[20] a stage in the procedure which the Journals occasionally note with the words 'The question was stated'.[21] The House was then considered to be in possession of the question, and the debate proper could begin. A peer, however, could withdraw his motion providing he had the leave of the House to do so. On Monday 13 May 1776, the Earl of Effingham moved the House for an account of the licences granted to export provisions to North America since the Prohibitory Act of 1775. He had originally made the motion on 10 May, 'but which I then thought proper to withdraw, as several of your lordships retired as soon as the debate was over',[22] and he had been content with moving that the Lords be summoned for the Monday.[23] The Duke of Richmond's motion on 3 May 1782, that counsel on the Cricklade Elections Bill be asked to state at which stage they proposed to oppose the Bill, was debated for over two hours before the Duke withdrew his motion.[24] Neither of these instances is recorded in the Lords Journals, as is the case with most known

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20. May, Parliamentary Treatise, p.171; compare L.J., xxxiv, 577(1776).
21. This appears particularly to be the case if an objection was voiced against the motion immediately that it was made: e.g., L.J., xx, 81(1715); Timberland,History, viii, 62 and L.J., xxvi, 20(1741); ibid., xxx, 155(1762); xxxiv, 594(1776).
22. Almon, Parl. Register, v, 280,284.
23. L.J., xxxiv, 711,719.
24. Debrett, Parl.Register (2nd,ser.), viii, 278-282; L.J., xxxvi, 458.

examples of motions which were withdrawn,[25] though this is not invariably so.[26]

On 6 April 1781, the Duke of Richmond brought to a close what had been a very warm debate on the procedures of the House with expressions of approval of the so 'liberal a principle' declared by Lord Chancellor Thurlow for allowing peers to withdraw motions whenever they pleased, for his Grace claimed to have witnessed numerous occasions when no such liberty had been practised.[27] The question before the Lords was one made by Earl Bathurst, the ex-Lord Chancellor, namely that, on 11 May 1781, a Committee of the Whole House should consider the propriety of commuting the clergy's entitlement to tithes into land ownership.[28] The discussion on procedure was occasioned by Earl Bathurst's inaudible retraction of this motion, which the House first became aware of when the Lord Chancellor put the question on the Bishop of Llandaff's motion 'that the House do adjourn to Monday next', and so ordered.[29] In the ensuing discussion, various references were made to the proper form of proceeding in the House: that withdrawing a motion ought to be made publicly,[30] that no new question could be

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25. E.g., Lord Carteret's motion that the Spanish Convention and other articles be read on 13 February 1739 (Parl.Hist., x, 1013-25; Timberland, History, vi, 1-10; L.J., xxv, 287); the Earl of Buckingham's motion on 1 February 1774 for copies of papers relating to the Boston tea riots (Walpole, Last Journals, i, 286; Fitzmaurice, Shelburne, i, 468-9; L.J., xxxiv, 17).
26. E.g., L.J., xxxv, 281(1778), 732(1779).
27. Debrett, Parl.Register (2nd.ser.), iv, 257.
28. Ibid., p.232.
29. Ibid., p.255; L.J., xxxvi, 264.
30. Debrett, Parl.Register (2nd.ser.), iv, 256.

considered before the previous one had been disposed of,[31] and that there were regular methods for doing so, either by a direct negative, by a motion for adjournment, or by the previous question,[32] but not by 'the ordinary question of adjournment, as if no business whatever remained before the House undisposed of'.[33]

Included in Richmond's list of regular forms of bringing business to a conclusion were two practices for doing so prematurely. Furthermore, they were a means of avoiding a direct vote on the main question before the House, which would then either be passed or rejected accordingly, usually without another division. This frequently arose from a tactical need of evading an issue: there were numerous opposition motions which it would be impolitic for a government to reject,but equally inexpedient to accept because of their implicit connotations. They were also a means of preventing the House from making precipitate decisions, while under other circumstances they might win for a political group the votes of those of mixed opinions, ready to postpone a measure which they would be reluctant to reject; hence the resort to various practices acknowledged as the 'Parliamentary' means of effecting the desired evasion.

The most effective means of countering any question was to move 'that this House do now adjourn'.[34] This motion took precedence over any other already before the House,[35] and if successful, it suspended

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31. Ibid., p.257.
32. Ibid., p.255.
33. Ibid., i.e. the formal adjournment at the close of the day's proceedings, H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.6.
34. E.g., L.J., xxviii, 412(1755).
35. E.g., ibid., xxi, 709-10(1722), xxv, 54(1737).

proceedings till the next day.[36] Since that could mean a week-end meeting of the House, a peer's motion , and hence the question put by the Lord Chancellor, would then read 'that this House do now adjourn to Monday next'.[37] This meant, however, that an adjournment motion which specified the day on which the House should next convene did not, in the Lords, lose its priority over other motions as was the case in the Commons.[38] The petition of the six lords condemned for treason, pleading that the Lords intercede on their behalf with the King, was presented on 22 February 1716. An attempt to avoid having the petition read in the House by moving to adjourn to 1 March 1716 was rejected in a division by 51 votes to 41. After a debate and three further divisions, the House of Lords decided on an Address desiring that the King reprieve 'such of the petitioners as shall appear to His Majesty to deserve the same'.[39]

On Friday 2 March 1770, a motion for an Address relative to the increase in the number of seamen was evaded by a motion to adjourn

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36. Some of the most contentious issues brought before the House of Lords in 1770 were disposed of by this procedural tactic: American riots, 18 May 1770 (ibid., xxxii, 593); Falkland Islands, 28 November 1770 (ibid., xxxiii, 17); Middlesex election, 5 December 1770 (ibid., xxxiii, 20). For another example, see the Sackville peerage issue, 7 February 1782 (ibid., xxxvi, 383; Leeds Memoranda, p.54).

37. E.g., L.J., xx, 199(1720); xxiv, 477(1735). The reason being that only a peer could move an adjournment for longer than the next day: H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.6. Lord Chancellor Macclesfield, when putting the question on an emergency adjournment, appears to have had a tendency to name the next day, whichever that might be (e.g. L.J., xxi, 496-7 (18 April 1721); p.625 (7 December 1721).

38. Thomas, House of Commons, p.176.

39. L.J., xx, 299; Sainty and Dewar, Divisions.

to Monday 5 March.[40] A few weeks earlier, on 15 January 1770, Lord Rockingham's motion for the Lords to be summoned for two days hence was superseded by a motion to adjourn for a week.[41] The conclusion must be that the House of Lords did not distinguish between the various kinds of adjournment motions as did the Lower House.

The Protest entered in the journals after the incident of 15 January 1770 expressed the tactical advantage of the adjournment motion. The minority claimed that a refusal to allow the Lords to be summoned was unprecedented, and that 'several lords in Administration, being sensible of the indecency and novelty of rejecting such a motion, chose to get it rejected indirectly by that Parliamentary management of moving to adjourn to a long day'.[42] A successful adjournment motion which was made before the original motion had been regularly stated by the Lord Chancellor meant that the latter was not entered in the journals.[43] If a motion to adjourn was refused, there was no rule against making a similar proposal later in the proceedings, but there had to be some intermediate business.[44]

A variant of this procedural motion was that to adjourn a debate until a named day; this too took precedence over an earlier motion, and could be used as an alternative to the corresponding procedure for countering a bill by appointing some stage of the legislative

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40. L.J., xxxii, 454.
41. Ibid., p.403.
42. Ibid.
43. E.g., compare Debrett, Debates, iii,232-4 and L.J., xxviii, 412 (1755); ibid., xxxii, 492(1770).
44. E.g., ibid. (21 March 1770); xxiv, 331(1734).

process to a date beyond the conclusion of a session. Although mainly employed against private and unimportant public legislation,[45] this was not exclusively so. On 6 February 1741 the debate on the motion for an Address requesting papers concerning the Convention signed with Spain in 1739 was first proposed to be adjourned to Monday 9 February. This was negatived, but in a division of 56 to 39 the House agreed to the next question of adjourning the debate to a day later, 10 February.[46] In February 1770 the protracted affair surrounding John Wilkes and the elections in Middlesex reached a climax in the House of Lords when the Opposition, on 22 February, moved a resolution to censure the Commons' judgement on the issue. Its rejection was followed by a Government-supported motion denying the Lords' right to interfere in the affairs of the Lower House. The Opposition countered with a motion to adjourn this second debate, but failed.[47] But doubtless the most successful use of this tactic, and one which had the most far-reaching effect, was that on 15 December 1783 when the Opposition carried the motion to adjourn the debate on the second reading of the East India Regulating Bill.[48] It was the first of two defeats for the Fox-North Coalition Ministry in the House of Lords, and marked the end of their short term in office.[49]

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45. E.g., ibid., xxi, 316 (3 May 1720, Calicoes Bill); xxiv, 382 (19 March 1734, Boone's Bill).

46. Ibid., xxv, 591; Sainty and Dewar, Divisions.

47. L.J., xxxii, 417-8 (2 February 1770).

48. Ibid., xxxvii, 25.

49. The division on 15 December 1783 was 87 to 79 for the adjournment; that on 17 December was on the motion to commit the Bill, rejected by 95 votes to 76. Sainty and Dewar, Divisions. See supra., pp.279-81.

In the debate on 6 April 1781, Lord Chancellor Thurlow observed 'that a motion of adjournment, or the Order of the Day, amounted to a full negative to any question at the time depending before the House'.[50] This was a means of evading ad hoc motions, for the Order of the Day was given priority over these.[51] After Prayers on 9 August 1721, the Lords received a petition and appeal against several interlocutory decrees of the Lords of Session in Scotland. Then the House was moved to read the petition of proprietors of redeemable debts which had been laid on the Table the preceding day. This was countered by a motion calling for the Order of the Day appointing the third reading of the Bill to restore public credit after the South Sea Company crash, which was approved by the House. The Bill passed its final legislative stage and was returned to the Commons.[52] The first part of the sitting on 5 March 1718 consisted of business brought on from the floor of the House, but the motion for the third reading of the Bill to enable Treasury officials to compound with a Mr.Ossley was opposed by a call for the Order of the Day for the second reading of the Bristol Workhouse Bill, on which the question was put and affirmed. The Lords then proceeded to demonstrate that this tactic could itself be overcome by a motion to adjourn. Upon concluding consideration of the Bristol Bill, the Lords proceeded to postpone the next Order of the Day, which was for

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50. Debrett, Parl.Register (2nd.ser.), iv, 256; supra., pp.370-1.

51. It is not clear whether the House of Lords followed the practice of the Commons, where the motion had to be 'for the Orders generally'. Hatsell, Precedents, ii, 108. All examples noted are for a specific Order of the Day.

52. L.J., xxi, 589-90.

the third reading of the Newcastle Hospital Bill. The next appointed business was a Committee of the Whole House on the St.Giles Church Bill, but an attempt was made to avoid the issue by a motion for the immediate adjournment of the House. The Order of the Day was insisted on, however, which most peers present apparently supported, for the question to adjourn was negatived. All the Orders of the Day had thereby been dealt with; therefore the peer who had originally moved the Ossley Bill decided to try again , this time successfully after which the Lord Chancellor adjourned the House to the next day. [53]

A direct method of avoiding a vote on a question was to move the previous question. On 7 February 1775, the Marquess of Rockingham presented petitions from London and West Indian merchants against the Government's policy towards America. He was obstructed from making a motion upon them because of the procedures of the House: [54]

> he observed, as a question was now before the House, that must be first disposed of; and as consequently the subject matter of the petitions could not regularly come under the cognizance of the House...he would be under the necessity of moving the previous question, which would open the door for taking into consideration a general state of the petitioners' grievances.

The question already before the House was to agree to a joint Address with the Commons concerning the alleged state of rebellion in the colony of Massachusetts Bay, and 'to beseech [His] Majesty...[to] take the most effectual measures to enforce due obedience to the laws

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53. Ibid., xx, 638-9.
54. Almon, Parl.Register, ii, 36.

and authority of the supreme legislature'.[55] Once the Address was approved, the merchants' petitions, 'the express prayer of which was,that they might be heard before "any resolution may be taken by this right honourable House respecting America",'[56] would be irrelevant.

The procedural device known as the previous question involved moving the House 'Whether the said question shall be now put'. The side who had invoked the tactic thereupon voted in the negative, so as to prevent any decision on the original motion. In the case of 7 February 1775, Rockingham and his supporters voted 'Not Content' on their own motion so as to terminate consideration of the Address and bring the petitions before the House. The Government, however, carried the division in favour of the Address by 90 votes to 29.[57]

The incident of 1775 was unusual in that the previous question was employed as the only regular means of bringing before the House a question which otherwise would not be considered. The tactic was used far more regularly as the favourite device of government to avoid taking a decision of the House on awkward opposition motions: the resolutions proposed by the Opposition based on the House of Lords' inquiry into the State of the Nation in 1778 were all obstructed and rejected by means of the previous question.[58] On 24 May 1733, one of the most crucial divisions ever to take place in the House of

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55. L.J., xxxiv, 305.
56. Ibid., p.306.
57. Sainty and Dewar, Divisions. The Government also had 10 proxy votes.
58. For example: 16, 19 February and 2, 12 March 1778, see L.J., xxxv, 310-12,316-19,333-4,365-7.

Lords occurred on the motion for the previous question. In the debate that day on the South Sea Company Directors' forfeited estates, three separate motions were made early in the proceedings, which later caused confusion as to the manner of resolving each question. The problem was settled in the form proposed by the Earl of Strafford: [59]

> That for avoiding the dispute about order, he would be for putting the previous question as to the motion made by the noble Lord, [60] and thereupon he would give his negative, as he would likewise do upon the previous question as to the motion made by the noble Duke, [61] in order to come at the motion for calling in Mr. De Gols, [62] which he would certainly agree to.

The first question was resolved in the negative by the collective voice procedure. [63] The second was taken to a division, and a total of 75 votes being cast on each side, the decision again went for the negative, and hence against Walpole and the Government. [64] Whereupon, the Earl of Scarbrough [65] renewed his motion for calling in De Gols, and Newcastle, in a last desperate effort to save the day for

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59. Torbuck, Debates, xi, 188.
60. Lord Bathurst, for the Opposition — that irregularities in the South Sea Company accounts were in violation of an Act of Parliament: Timberland, History, iv, 140; L.J., xxiv, 278-9.
61. Duke of Newcastle, for the Government — that the current directors of the Company present an account of how the money was disposed: Timberland, History, iv, 141; L.J., xxiv, 279.
62. Earl of Scarbrough, for the Opposition — to examine Mr. De Gols, the cashier of the Company : Timberland, History, iv, 142; L.J., xxiv, 279.
63. See infra., pp.427-8.
64. The previous question made no difference to the conventional practice of the Lords, where an equal vote is given in the negative, and in this case, therefore, against putting the main question which was Newcastle's motion. Harrowby MSS., document 21 (part III). For the significance of the vote, see supra., pp.274-6.
65. Sir Thomas Robinson thought the motion was made by Lord Bathurst : H.M.C., Carlisle MSS., p.117.

Administration, moved another previous question. Several peers, however, voiced their discontent with this move, so that Sir Robert Walpole, who had attended the whole proceedings at the Bar of the House, sent Lord Lynne[66] with a message to the Duke, who thereupon withdrew his motion.[67] Ironically, if the Government peers had insisted on the device and pushed it to another division and the same number of votes again cast, the equal vote this time would have been decided in favour of Walpole, against calling in De Gols.

The inherent dislike of divisions in the House of Lords ensured that this did not take place. But the possibility of a second division on the main question was a disadvantage of this procedural technique. It seldom happened, however — there being only three instances between 1714 and 1784.[68] If the previous question was carried, the main question had to be put immediately to the House, allowing no amendment or further debate. Although a regular part of Parliamentary obstructionist tactics, the previous question was not popular among contemporaries. The Protests entered by the minorities in the journals of the House frequently regretted that thus the sense of the House had not been obtained on the issue proper.[69] In the

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66. Son of Viscount Townshend,who was summoned to Parliament in his father's barony in 1723.

67. H.M.C. Carlisle MSS., p.117. For an account of the debate, see ibid., pp.116-8; Timberland, History, iv, 139-49; Torbuck, Debates, xi, 177-95; London Magazine, 1733, pp.668-672; Parl.Hist., ix, 106-118.

68. American colonies, 7 February 1775 (see Burke Corr., iii,110); Address on the Civil List, 16 April 1777 (there were three divisions on the issue); Complaint against The General Advertiser 19 April 1779. For all three, see Sainty and Dewar, Divisions.

69. E.g., L.J., xxi, 621 (5 December 1721); B.L.Add.MS.35878, f.194; Protest of 5 February 1762; also L.J., xxx, 155.

debate on the state of the army on 9 December 1740, Lord Talbot voiced the opinion of many of his fellow Parliamentarians when he denounced the use of the previous question as 'Paraliamentary jockeyship'.[70]

The most common form of countering a question, therefore, continued to be the amendment. Many were genuine attempts at improving the original motion, or represented a compromise between conflicting views. Amendments could be made by omitting words or phrases, and sometimes inserting others in their place, or by adding words and clauses to a motion. Whatever the form of the alteration, the question had first to be put on the amendment itself, and then on the question as a whole, either in its original or amended form.[71] There also developed, however, the destructive amendment whereby it was possible to change the meaning of the motion entirely from that intended by the proposer. It was, in effect, another means of evading a decision on a question. The sting of Lord Bathurst's motion on 1 December 1740 calling on the Government to produce the correspondence between Admiral Vernon and the Admiralty and the Secretary of State's office, was nullified by the acceptance of Lord Chancellor Hardwicke's amendment limiting it to those that concerned the provision of ships, men, stores, and ammunition.[72] Successive amendments to a similar motion, on 22 December 1741, for copies of the memorials and correspondence between the British Crown and the Queen of Hungary, led to the minority's protest that

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70. B.L.Add.MS.6043, f.49.

71. E.g., L.J., xxii, 186(1723); xxviii, 400(1755); xxxiv, 571 (1776).

72. Ibid., xxv, 546; B.L.Add.MS.6043, f.36. For the debate, see ibid., ff.32-6.

'the leaving out those words in the motion [had] invalidate[d] the Address to the greatest degree'.[73] After Lord Viscount Weymouth had presented to the House, on 17 March 1778, the King's Message concerning the treaty signed by France and America, the Ministry moved an Address of Thanks including expressions of support for the Government's conduct of the war.[74] The Duke of Manchester, however, on behalf of the Opposition, moved an addition to the Address requesting that the King dismiss his Ministers 'in consideration of [their] want of success...in almost every civil and military plan'.[75] The amendment was defeated by 84 votes to 34 and by 16 proxies to 2.[76] On 17 February 1783, Lord Shelburne's Government put before both Houses of Parliament the peace terms for concluding the American war. The 'strong censure'[77] proposed by the Opposition in the House of Lords was an amendment to the Address of Thanks which took the form of omitting all but the introductory and salutatory parts of the Address and the substitution of new paragraphs more consonant with their own views. The destructive amendment was rejected by 69 votes to 55.[78]

Numerous instances of the use of the destructive amendment against proposed Addresses to the Crown are to be found in the Journals;[79] it was an accepted Parliamentary form of proceeding. However, when the

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73. L.J., xxvi, 20.
74. Ibid., xxxv, 376.
75. Walpole, Last Journals, ii, 135-6.
76. Sainty and Dewar, Divisions.
77. Buckingham, Courts and Cabinets, i, 155.
78. L.J., xxxvi, 598; Sainty and Dewar, Divisions.
79. E.g., 17 December 1765, L.J., xxxi, 227; 31 October 1776, Ibid., xxxv, 6-8, Burke Corr., iii, 299.

Earl of Suffolk attempted to employ the tactic on 4 February 1778 against the Earl of Abingdon's motion to resolve that it was illegal to give money for the purpose of raising troops without the sanction of Parliament,[80] he provoked an outburst of criticism from several peers,[81] in particular from Lord Camden who 'affirmed that all his experience did not suggest so flagrant a piece of unfair insolence'.[82] Suffolk decided to withdraw his amendment, but Abingdon's motion was defeated by a direct negative of 90 votes to 30.[83]

On 29 January 1723, a Protest was entered in the journals in which it was alleged 'to be contrary to the nature and course of proceedings in Parliament, that a complicated question, consisting of matters of a different consideration, should be put, especially if objected to, that lords may not be deprived of the liberty of giving their judgements on the said different matters, as they think fit'.[84] Throughout the period, peers claimed it was their right to insist that a complicated question be divided; but questions which gave rise to such assertions appear to have been resolved by means of amendments. On 21 February 1735 the Scottish peers' petition complaining of malpractice during the election of 1734 was brought on in the House of Lords by Order of the Day, and a motion made that they present within the following week a written statement listing particular instances and naming persons involved in employing the

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80. Parl.Hist., xix, 634,636.
81. E.g., ibid., cols.636,637,643.
82. Walpole, Last Journals, ii, 102.
83. Ibid., pp.101-2; Parl.Hist., xix, 629-44.
84. L.J., xxii, 73.

'undue methods' of which they complained.[85] Thereupon, Lord Bathurst stood up to 'make use of that right which every lord has, by the constant practice of this House, and desire that the parts may be separated, and the question put separately upon each part ...This, he said, was a right that was never controverted, and he insisted upon his right'.[86] Bathurst spoke a second time in defence of this privilege; but the original question still being called for, he rose a third time and, since the House 'did not seem inclined to grant him a right, which had never been denied to any lord in that House',[87] he moved to omit the part of the motion calling for the offenders to be named. The question was put on the amendment, but overwhelmingly rejected by 90 votes to 48.[88]

A few years later, in the debate on the army estimates for 1741, Thomas Secker, then Bishop of Oxford, also called for the motion to be divided on the grounds that it 'consists of two very different parts. Lords may be for one and against the other. Divide them. This was not seconded and therefore not insisted on though a matter of right'.[89] No amendment was introduced on this occasion, and Secker decided to vote in the majority against the Address, which was defeated by 67 votes to 49. The Duke of Richmond suggested this practice as a means of solving a minor problem in the House on 7 February 1782. The Duke of Chandos had moved to appoint a Committee

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85. Ibid., xxiv, 466.
86. Timberland, History, iv, 395.
87. Torbuck, Debates, xii, 467; L.J., xxiv, 466-7.
88. For the debate, see Timberland, History, iv, 376-93; Torbuck, Debates, xii, 442-68.
89. B.L.Add.MS.6043, f.68 (3 February 1741); L.J., xxv, 585.

of the Whole House to meet on Monday 12 February to inquire into the causes for the loss of the army under Earl Cornwallis at Yorktown; but then doubts arose as to the early day proposed. Richmond insisted there was no problem.[90]

> With regard to the objection to the earliness of the day, that difficulty...might easily be removed by either dividing the motion, or by debating the main point, viz., whether a Committee should be appointed or not, and then after that was decided, agreeing upon the day when. This, his Grace said, was the frequent practice of the other House of Parliament.

An amendment naming Tuesday 19 February, however, was proposed and agreed to.[91] The conclusion must be that a peer's right to divide a complicated question, though asserted regularly, was not acknowledged by the House of Lords.

These were the tools with which every speaker entering into debate was armed. They could only be enforced, however, by the will of the Parliamentary majority; but they provided the majority with the means of outmanoeuvering any opposition tactic employed against them.

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90. Debrett, Parl.Register (2nd.ser.), viii, 105.

91. For the debate, ibid., p.100-5. The Lords Journal suggests that no amendment was proposed, but that 19 February stood part of the original motion. L.J., xxxvi, 383.

XII

THE HOUSE IN DEBATE

No debate could properly take place unless a question had been regularly stated to the House,[1] otherwise the issue had to be dropped.[2] No one person in the House of Lords, however, fulfilled the role of the Speaker of the House of Commons on whom the responsibility lay for terminating any proceedings or general conversation upon an issue by pointing to a member who had a motion to make. The Lords' proceedings in all cases were governed by the rules of the House,[3] and their enforcement lay with the peers themselves, not with the Speaker,who appeared to preside there. It was, therefore, left to a peer who was the initiator of a business which had been made an Order of the Day to restore regularity by making his motion.[4] When there was no previously arranged business, any peer could commence a debate without prior notice, and such discussions could also take place before and between items of planned business.

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1. See supra., p. 369.
2. Debrett, Parl.Register (2nd ser.), viii, 82(1782); Almon, Parl.Register, xv,213(1780). After the first reading of the East India Regulating Bill on 9 December 1783, and a date appointed for its next stage, a conversation arose in which the whole principle and merit of the Bill was discussed; but no division could be held because no motion had been made,and hence there was no question before the House. B.L.Add.MS.33100, f.450.
3. Harrowby MSS., document 35(q).
4. Compare 28 June 1779: three peers had spoken, but no motion had been made, before the Lord Chancellor proposed that the Order of the Day be read so 'that business might be more regular'. Almon, Parl.Register, xiv, 544.

It was the opinion of the House that decided which peer to hear first, should two rise to their feet at the same time. On 24 May 1733 the accounts of the South Sea Company directors' forfeited estates were brought in to the House of Lords, and both Lord Bathurst, for the Opposition,and the Duke of Newcastle, for the Government, rose to speak. Lord Chancellor King 'pointed' [5] to the latter, whereupon Lord Carteret challenged his right to determine the question, and declared his preference for Bathurst. In the meantime, both candidates for the ear of the House had remained standing, but upon Bathurst's assertion that 'it has always been the custom of this House, out of compliance to the lord who made the motion, to hear him first', [6] Newcastle sat down, conceding the point. A similar incident occurred on 7 February 1775: the House, being resumed after a conference with the House of Commons and receiving the report of the same, the Earl of Dartmouth rose to move their lordships' concurrence with the Address on the state of the colonies, communicated at the conference. [7] At the same time, the Marquess of Rockingham stood up in order to present petitions from London and West Indian merchants. A debate ensued as to who should speak first, and 'in this confusion the Lord Keeper (Lord Apsley) put the question. "Is it your Lordships' pleasure that the Earl of Dartmouth be now heard?"'.[8] The Duke of Richmond objected 'that [no] lord in that House should have a preference before another; and that the preference should be determined by the House'. [9] Lord Mansfield,

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5. Torbuck, Debates, xi, 178; London Magazine,(1733) p.668.
6. Timberland, History, iv, 139.
7. For this procedure, see infra., pp.529-36.
8. Almon, Parl.Register, ii, 34.
9. Ibid.

however, contended that the Speaker, of both Houses, did have the right to decide on whom to put the question. The Earl of Denbigh then successfully asserted that the matter should be decided according to 'the respect due to the other branch of the legislature', [10] the House of Commons, and the question for hearing the Earl of Dartmouth was put and carried. [11] A government's regular majority in the Lords ensured that their candidate would safely be chosen when such disputes arose. In the Commons, a disgruntled Speaker might occasionally favour the opposition spokesman. [12]

No peer was to speak twice on a question without leave of the House, which he could rightfully apply for in order to explain some part of his first speech, but no new matter was to be introduced. [13] A peer, speaking early in a debate, might often therefore reserve the right to address the assembly again should any new arguments be introduced during the course of the debate, [14] while many more commenced their second speech by claiming that they did so in reply to another. [15] Another restriction on the number of speeches to be made was the ruling that a peer who called another to order could not then enter into debate, or should be called to order himself. [16] The absence of an impartial moderator of proceedings, who could be appealed to to execute all points of order, meant that the enforcement

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10. Ibid., p.36.
11. H.L.R.O., Parliament Office Papers 354, Precedents Book, p.108.
12. Richmond to Rockingham, 12 February 1771, quoted in Olson, Radical Duke, p.137.
13. Standing Order No.19 (1621).
14. E.g., Timberland, History, viii, 369(1743).
15. E.g., ibid., vii, 618-20(1740).
16. Walpole, Memoirs of George III, iv, 144.

of the rules of the House was erratic, and the peers tended to overlook infringements of the rules of debate when it was to their political advantage to do so. Hence, in most debates, several peers addressed the House on more than one occasion.[17] The first Earl of Chatham, in particular, paid no heed to the rule: in the debate of 14 March 1770 on Lord Rockingham's motion to obtain an account of the Civil List expenditure between 1769 and 1770, he spoke four times in all, though two of the four speeches were during his personal altercation with the Duke of Grafton.[18] In the debate on the Lords' Address, 11 November 1766, 'Lord Chatham spoke twice, and Lord Temple after his usual manner, 5 or 6 times'.[19] But they were not the only ones: Horace Walpole contended that the Duke of Richmond spoke twenty times at the third reading of the East India Regulating Bill, 19 June 1773.[20] The same Duke spoke three times in a debate on 19 February 1779: firstly, when he moved an Address for the state of the navy in January 1771; later, he made several more motions; and, finally, to conclude the debate. After the second speech he was followed by the Duke of Grafton, who began with an apology:[21]

> he hoped the House would not think him disorderly in rising twice, for as the noble Duke had now read all his motions new matter arose from them, otherwise he should not have troubled their lordships again, as he was determined to observe the rules of order laid down by the noble Lord on the woolsack, who he hoped would himself take care to set them the example he so often urged.

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17. E.g., 25 and 28 June 1779, Almon, Parl.Register, xiv, 517-41,541-9.
18. Grenville Papers, iv, 509-15. Charles Lloyd, Grenville's correspondent, claimed the accounts were for 1768-9; cf. L.J., xxxii, 476. See also, infra., pp.413-4.
19. MSS.North, d.10, f.198, misdated 10 November 1766.
20. Walpole, Last Journals, i, 239 (entry dated 18 June 1773).
21. Almon, Parl.Register, xiv, 134.

Grafton's remarks 'alluded to the Lord Chancellor [Thurlow] speaking several times to the first motion, before the others were read'.[22]

The debates of the House of Lords normally followed the usual pattern of debate, speakers for and against rising alternately to speak to the question, so that there would be a continuous exchange of argument.[23] But it was also quite common for two or, more rarely, three speakers on the same side to speak in succession and then be answered by their opponents.[24] To a certain extent, the Lords' general observance of the natural pattern of debate may have been governed by convention, but there also emerges from contemporary sources a concern that the House should appear to be genuinely taking a part in the Parliamentary function of inquiry and decision-making. On 6 March 1780 the Earl of Shelburne moved an Address to the Crown to ascertain who had advised the removal of the Marquess of Carmarthen and the Earl of Pembroke from their county lieutenancies; he argued,

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22. Ibid. The motion for the address was agreed to, L.J., xxxv, 582.

23. E.g., 14 April 1716, to commit the Septennial Parliaments Bill — Timberland, History, iii, 29-39; H.M.C. Stuart Papers, ii, 122-3, 124. 1 March 1739, Spanish Convention — B.L.Add.MS.35875, ff.426-7; Timberland, History, vi, 182; London Magazine (1739), pp.468-99,521-6. 13 November 1755, Address in Reply — Parl.Hist., xv, 529-31 n. 11 March 1766, Second reading of the Stamp Act Repeal Bill — Debrett, Debates, iv, 367-8; Fortescue, Corr.of George III, i, 280-1; B.L.Add.MS.33035, f.396.

24. E.g., 18 December 1718, to commit Protestant Interest Bill — Timberland, History, iii, 101-110; Torbuck, Debates, vii, 102-8. 1 June 1733, South Sea Company inquiry — H.M.C. Carlisle MSS., pp.118-20; London Magazine (1733), pp.680-2; Cholmondeley (Houghton) MSS., Correspondence No.1990; Torbuck, Debates, xi, 221-8. 3 and 4 February 1766, Committee of the Whole House on the American riots — Fortescue, Corr. of George III, i, 255. 1 May 1782, second reading of the Cricklade Bill — H.L.R.O. Parliament Office Papers, 58/26, Miscellaneous Papers; Debrett, Parl.Register (2nd.ser.), viii, 255-77; The Public Advertiser, 2 May 1782; Morning Chronicle and London Advertiser, 2 May 1782.

as Carmarthen recalled, that the act was 'a direct attack on the freedom of debate and Parliamentary proceedings, as supposing we were dismissed for our conduct in that House [of Lords]'.[25] A month earlier, on 8 February 1780, Carmarthen had publicly stated, in debate, his intention of voting for Shelburne's motion for a Committee of both Houses to inquire into public expenditure.[26] It was this speech that Lord Viscount Stormont, the Northern Secretary, referred to in the debate of 6 March when he declared his antipathy to the practice, exemplified by Carmarthen, whereby a peer announced that he '"would give such an opinion on such a question"...God forbid,' declared Stormont, 'that any man should come into this House with a determined opinion to vote, without first hearing the debate!'.[27] Another who lamented any attempt to avoid a genuine debate on a subject was Bishop Burnet of Salisbury, who complained that 'when resolutions are taken up beforehand, the debating concerning them is only a piece of form, used to come at the question with some decency'.[28]

The theory of debate was expounded by Lord Rockingham in a letter to Shelburne on 31 January 1775 after he had received a request from the Earl of Chatham to support an unspecified motion that he intended to make in the Upper House the following day. Rockingham insisted that 'I shall give it as full consideration as the time will allow, and shall very fairly be for it or against it, just as may appear best to my own judgement, which, allow me to say, is the only guide

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25. Leeds Memoranda, p.27; Parl.Hist., xxi, 217.
26. Ibid., xx, 1339-40; Leeds Memoranda, pp.22-3.
27. Almon, Parl.Register, xv, 201.
28. Bishop Burnet, History of His Own Time, iv, 310.

I dare trust in so important (a matter)'.[29] None were better qualified to succeed in debate and influence their hearers' judgement than the law lords. Observers of the legal proceedings in the case between the City of London and the Dissenters in February 1767 thought originally that the outcome would be decided on a majority vote of the House, as there had been no unanimity among the judges who had been consulted for their opinion. At the close of proceedings on the case, on 4 February 1767, however, Lord Mansfield the Lord Chief Justice of the King's Bench, spoke in favour of the Dissenters. His 'force of argument', reported W.Rouet to Baron Mure 'enforced by that matchless eloquence, left them [the Lords] all aghast and speechless; and after a short pause, almost the whole House cried out, "Agreed, agreed!" ' to affirm the judgement of the lower court.[30] Four years earlier, in the debate on whether to agree to the Commons resolutions against the North Briton and that privilege of Parliament did not extend to libel, 29 November 1763, this influential orator held the attention of the Lords for two hours, at the end of which 'he carried away many of the Opposition, particularly Lord Lyttelton, and the greater part of the Duke of Newcastle's bishops'.[31] Little wonder that the Duke of Richmond advised his colleague, the Duke of Portland, to secure the assistance of a law lord to support his private bill when it came before the Lords, otherwise 'many a man will shelter himself under the saying that it was a matter of property

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29. Rockingham Memoirs, ii, 270. On 1 February 1775, Chatham presented his Provisional Bill for settling the troubles in America, which was rejected after a first reading, L.J., xxxiv, 299.
30. Caldwell Papers, ii(2), 103; L.J., xxxi, 475.
31. Walpole, (Yale) Correspondence, xxxviii, 248; L.J., xxx, 426-9.

and all the law lords [were] against you'.[32] However, there were very few instances of a spontaneous change of opinion as a result of debate. Most peers voted consistently for government or opposition; those who were uncommitted to party allegiance or indebted to the Crown for financial support were more likely to follow in the steps of a senior officer of state when it came to vote, than be swayed by the force of argument.[33]

Most members of the Upper House were generally reluctant to enter into debate. Few accepted that they were under any obligation to participate, and many who did venture to speak apologised for addressing the House as if it were an offence to do so. At the close of the first day's debate on the motion to commit the Protestant Interest Bill, 18 December 1718, Lord Lansdowne rose in his place and he immediately assured their lordships that 'having never tres-passed on your patience before, I may hope for a readier excuse if I trouble you for once, and I give you my word, that no indulgence shall encourage me to make a custom of it'.[34] Others, before entering into the body of their speech, excused their lack of experience and unfamiliarity with the 'formalities of Parliamentary debate', expressing a preference at other times to remain quiet.[35] The fifth Duke of Devonshire had remained silent during the debates of the House for eleven years before he made his maiden speech in

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32. Portland Papers, PwF 6314. The Bill concerned was to enable Portland to sell land in Hampshire: see L.J., xxxiii, 139,160, 162,167,168,219 (March - April 1771).

33. E.g., Parl.Hist., vii, 283(1716). Compare Earl Temple's act on 1 February 1775; he considered the Earl of Chatham's Provisional Bill to settle the troubles in America a 'mischievous' measure, yet voted for it out of respect for Chatham. Walpole, (Yale) Correspondence, xxxii, 235.

34. Parl.Hist., vii, 577; L.J., xxi, 28. Lansdowne was created a baron in 1712.

35. Almon, Parl.Register, x, 18.

the debate on the dismissal of Carmarthen and Pembroke on 6 March 1780. Edmund Burke wrote to the Duchess of Devonshire and hoped that his Grace would persevere henceforth 'until it will become, by habit, more disagreeable to him to continue silent on an interesting occasion, than hitherto it has been to him to speak upon it'.[36]

A reticence of this kind was disastrous for a political leader like the Marquess of Rockingham. His silence and nervousness in debate won him only personal contempt from contemporaries,[37] while it deprived his party of a much needed additional voice in the House of Lords. On 17 December 1765 he timidly wrote to George III, 'ashamed to inform His Majesty that he did not attempt to speak upon [the] occasion' of the Address in Reply.[38] A few months later, Rockingham sent a report of the long debate on the Window Tax Bill, 28 May 1766, to the King:[39]

> Lord Rockingham found the necessity of attempting, and tho[ugh] indeed extremely confused, got better thro[ugh] than he expected — and by speaking, perhaps curtailed the debate, as many lords were prepared to attack him for not speaking, and, therefore, that preparation was no longer serviceable.

The reasons why the majority of peers rarely or never spoke in debate can easily be appreciated. Most had no real motive for doing so: no strong political convictions, no ambitions to be fulfilled; while the ordeal of public speaking was sufficient in itself to deter many. Those who did conquer the initial aversion to speak, often

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36. Burke Corr., iv, 213; Parl.Hist.,xxi, 228.
37. E.g., Walpole, Memoirs of George III, iv, 39.
38. Fortescue, Corr. of George III, i, 203.
39. Ibid., p.342.

revealed their nervousness by their confusion and low-toned delivery of the speech. This was true of His Royal Highness, the Duke of York, when he made his first speech in the Lords on the Massachusetts Bay Indemnity Act on 22 May 1767.[40] His nervousness might also have been exacerbated by a consciousness that his speech was made against the interests of the Government, and against the express instructions of his brother, the King. Many never overcame their self-consciousness: the Earl of Fauconberg pitched his voice so low when he spoke on the second reading of the Contractors Bill on 1 May 1782 that the reporters of the Morning Chronicle failed to hear on which side of the question he proposed to vote.[41] Lord Amherst spoke three times in the debate on the King's Speech, 25 November 1779, always in almost an inaudible voice, which he could do nothing to change despite the repeated encouragement of his fellow peers to speak out.[42]

The number of peers who participated in debate, therefore, was small and no great variation in the trend can be seen between the early and latter part of the period under study. Most debates on issues of public business attracted no more than ten speakers, and the number could be as low as two or three, while for debates of major political significance the total varied between fifteen and twenty. The record for the highest number of speakers in debate was set on 14 April 1716 when the Lords considered the motion to commit the Septennial Parliaments Bill. This total of twenty stood throughout the period until surpassed by one in the debate of 17 February 1783 on the peace preliminaries.

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40. Walpole, (Yale) Correspondence, xxii, 521 and n.10.
41. Morning Chronicle and London Advertiser, 2 May 1782.
42. Almon, Parl.Register, xv, 63-5,66,72.

A ministry's confidence of usually having a majority vote in its favour in the House of Lords relieved government peers from the necessity of always entering into debate and, on occasions, they made no effort to defend their administration in spite of the insults and charges brought against them by opposition. While the Duke of Richmond fulminated against the Government on 8 April 1778, Lord North's colleagues in the House of Lords sat in silence for 'so many hours' that Lord Ravensworth rose to express his astonishment at the feat![43] The same Ministry's lack of utterance on a resolution proposed by Chatham concerning the King's Answer to a remonstrance of the City of London, 4 May 1770, led Lord Temple to christen them 'the dumb Administration'.[44]

A distinctive feature of debates in the Upper House was the lengthy pauses which often fell between speeches, interrupting the flow of debate. These were sometimes due to no attempts at reply by the government spokesmen;[45] but more often they marked a lull in proceedings, occurring either at the beginning[46] or in the middle of a debate[47], and indicating a hesitation to participate on the part of peers, or between two items of business, especially after

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43. Almon, Parl.Register, x, 401.

44. Debrett, Debates, v, 191; see also Walpole, Memoirs of George III, iv, 82. For another example, see Parl.Hist., xxii, 658(1781).

45. E.g., Grenville Papers, iii, 242-3(1766); Almon, Parl.Register, xv, 127(1779).

46. E.g., B.L.Add.MS.6043, f.37(1740); London Magazine,(1734) p.399; Debrett, Debates, v, 374(1771); Almon, Parl.Register, xiv,318 (1779); Debrett, Parl.Register (2nd.ser.), iv, 15(1780).

47. E.g., Cholmondeley (Houghton) MSS., Correspondence No.1990(1733); B.L.Add.MS.6043, f.123 (1742); Debrett, Debates, i, 102(1744); Almon, Parl.Register, xiv, 240(1779).

a division.[48] The Lord Chancellor, not possessing the power to terminate the proceedings of the House unless first proposed from the floor, could only wait during such silences until the debate revived; but sometimes, presuming that nothing more was to be said, he might proceed to put the question, the threat of which was often sufficient to spark off the debate once more.[49] Such an incident occurred on 13 February 1734: after the Duke of Marlborough had presented a Bill against depriving army officers of their commissions, the motion for a second reading was followed by a silence, broken only by shouts for putting the question. The Lord Chancellor's attempt to do so commenced the debate on the measure, which was finally decided by a vote against the second reading of 100 to 62, including proxies. Thereupon, the Earl of Scarborough rose to his feet, asserting that he had not had an opportunity to speak before the division, but desired to give his considered opinion on the Bill, after which he moved it be rejected, which was carried without a division.[50] His claim of having no opportunity to speak earlier can only be justified if he was not present in the House when the affair began, which cannot be established.

To gain the attention of the House, a peer had to rise to his feet and remove his hat,[51] and was to remain so until he had finished

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48. E.g., Timberland, History, iv, 428(1735).

49. E.g., Grenville Papers, iii, 242(1766); Debrett, Parl.Register (2nd ser.), iv, 15(1780). All subsequent speeches, technically, were in contravention of the Standing Order which stipulated that no peer should speak after the question 'had been entirely put' by the Speaker. Standing Order No.17(9 January 1674).

50. Torbuck, Debates, xi, 440-69; also Timberland, History, iv, 185-201; Parl.Hist., ix, 327-52.

51. Standing Order No.19 (1621); e.g., H.M.C. Egmont Diary, ii, 152 (1735).

his speech. Only one instance has been found where the Lords made an exception to this rule: this was in the case of the Earl of Chatham on 30 May 1777: [52]

> The noble Earl was brought to the House in a sedan chair, his hands wrapped up in flannels, and two crutches in the chair, but looking extremely well, and having a cheerful countenance...His Lordship attempted to rise, but on account of his infirmity was indulged by the House with the privilege of speaking in his seat.

Two years later, the Earl of Bristol could not have made quite such a convincing impression on his fellow peers for, returning after a long illness to the House on 24 March 1779 to lead the inquiry into the affairs of Greenwich Hospital, which he had instigated, 'his Lordship...was obliged to support himself on his crutches' while he spoke, despite his great weakness. [53] Peers would normally stand in their places when speaking, although those who sat somewhere near the clerks' Table might well have approached the Table so as to address the House from the centre of the chamber from where their speeches would probably have been more audible. [54]

By the eighteenth century, the practice of speaking from notes was no longer regarded with the same disapproval as had been true of

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52. Public Advertiser, 31 May 1777.
53. Almon, Parl.Register, xiv, 180.
54. E.g., Morning Chronicle and London Advertiser, 2 May 1782; Debrett, Parl.Register (2nd.ser.), viii, 271.

the previous century. Interspersed in the political sources of the period are numerous sketches of proposed speeches and points to be raised in debate.[55] The custom of having a fully prepared speech, however, was mainly reserved for men inexperienced in the art of Parliamentary oratory, and was sufficiently uncommon to attract sarcastic comments from their contemporaries. The young second Earl Stanhope opened the debate of 1 February 1743 about the employment of Hanoverian troops in British service with 'a precomposed speech which he held in his hand with great tremblings and agitations, and hesitated frequently in the midst of great vehemence: but his matter was not contemptible'.[56] John Campbell of Stackpole Court sent a report of the same debate to his son Pryse, and thought that Stanhope, who 'had his speech writ down and was often forced to look at his paper...altogether made rather a merry figure'.[57] Lord Talbot, son of a former Lord Chancellor and a member of the Upper House by then for two and a half years, made a speech against the Lords' Address in Reply to the King's Speech on 15 November 1739 which was 'an hour long, [and] most of which he read out of a large paper like a lawyer's brief'.[58] Nervous novices prepared for the occasion and probably found comfort in holding a complete text of the speech in their hands, but even this was not sufficient for some. The Earl of Galloway meant to speak on Chatham's motion to Address the King

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55. E.g., B.L.Add.MS.35875, ff.196-7 (Mortmain Bill, 1736); Add.MS.35878, ff.37-42,43-48 (Habeas Corpus Bill, 9 May and 2 June 1758); Wentworth Woodhouse Muniments, R 81.
56. B.L.Add.MS.6043, f.147.
57. N.L.W.MS.1352, f.118.
58. Ibid., f.25.

regarding the orders and instructions of General Burgoyne, 5 December 1777, but upon rising to his feet 'was awed, as he said, with the dignity of the assembly, and therefore begged leave to deliver his thoughts in writing'.[59] Horace Walpole confirmed this in his record of the incident: 'Lord Galloway declared his zeal, and that he would give half his fortune to the carrying on the war; but being out, after speaking of his figure and nation, he was forced to pull out his speech and read it'.[60] But even experienced speakers saw the value of having a set speech, especially if they were interested in sending an accurate copy to the press.[61]

Neither did the House place any restriction on peers taking notes during debates. Lord Hardwicke regularly did so, before and after being appointed Lord Chancellor.[62] Dr.Thomas Secker was a diligent recorder of the debates he attended between 1735 and 1742 as Bishop of Oxford, but some of these must have been taken so hastily that, upon his own admission, he could not always understand his own handwriting.[63] On 10 December 1755, the young Prince of Wales, the future George III, was observed taking notes of the debate

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59. Almon, Parl.Register, x, 89; Parl.Hist., xix, 503.

60. Walpole, Last Journals, ii, 82. Galloway was a representative peer, 1774-90.

61. This was quite common by the mid-1770s; ibid., i, 462. Another example, Almon, Parl.Register, ii, 54-7 (Bishop of Peterborough, 7 February 1775). Compare the earlier practice, where a peer, possessing a good memory, checked the reporters' account of a debate for accuracy, e.g. B.L.Add.MS.4302, ff.95,97.

62. He was appointed Chancellor in February 1737; e.g., B.L.Add. MS.35875, ff.168-70 [unidentified debate]; ibid., ff.204-7, Quakers Tithes Bill [12 May 1736]; ibid., ff.426-7 (Spanish Convention [1 March 1739]; ibid., ff.450-1 [31 May and 2 June 1739], Money owing from Spain; Add.MS.35878, ff.82-8, Habeas Corpus Bill (2 June 1758). See also Wentworth Woodhouse Muniments, R 81-34 (1773); B.L.Add.MS.51423, f.175(1765).

63. B.L.Add.MS.6043, f.5.

on the motion for a vote of censure on the treaties with Russia and Hesse Cassel.[64] This practice was also favoured by politicians as a means of preparing for their own subsequent speeches. Nor did they attempt to hide the practice: the Earl of Sandwich apologised for rising to speak at a late hour on 7 February 1775, but admitted that 'he had employed himself in taking notes the whole evening', but now stood to answer the Duke of Richmond.[65]

The conventions of the House allowed peers to include the reading of papers as part of their speeches.[66] In the debate of 18 May 1775, on the question whether to receive the Memorial of the New York Assembly, the Earl of Hillsborough insisted that no lord was 'allowed to present a petition unless he opened the purport of it; that the... reading it in his place, as a part of his speech, would be accepted by the House'.[67] Hillsborough also suggested that if the Duke of Manchester, who had presented the Memorial and moved that it be formally read, found that too much of a burden, 'then the clerk might go to him, and stand by his Grace, and read the Memorial as part of his speech'.[68] This brought the Duke of Richmond to his feet immediately, determined to pour scorn on the proposal.[69]

> What my Lord! The clerk to go and stand by a lord and read a paper, as a part of that lord's speech! Very pretty truly! Why then, we need not any of us be at the trouble of making speeches; we need only get our speeches written for us, and have the clerk read them; we may then any of us prove as eloquent as the noble Earl himself.

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64. Yorke, Hardwicke, ii, 260.
65. Almon, Parl.Register, ii, 51.
66. E.g., Parl.Hist., xxii, 969.
67. Almon, Parl.Register, ii, 152-3; see supra., p.37.
68. Almon, Parl.Register, ii, 153.
69. Ibid.,

The remainder of the debate turned on the question of procedure, but neither Manchester nor any other peer expounded the content of the Memorial. The motion that it be given a formal reading was rejected by 21 votes to 70.[70]

Hillsborough's suggestion, however, was adopted by a peer on 16 February 1778. The Earl of Thanet presented a letter which he had received from General Gates concerning the capture of Burgoyne's army at Saratoga, and gave it to the clerk to read. As he prepared to do so, Lord Viscount Townshend and Earl Gower objected to the proceeding, the latter because 'it was contrary to Parliamentary form for the clerk to read it at the Table',[71] as it would give the document the status of having been formally read to the House. Thanet had clearly overlooked one part of Hillsborough's proposal , he had neglected to summon the clerk to stand by him while he read the letter. The Duke of Grafton, who sat near Thanet, attempted to dispel the confusion and any suspicions that the Earl had been trying to by-pass the procedures of the House, by explaining that Thanet had 'merely begged the letter might be read by some other person, because he had a cold and hoarseness which he feared might prevent the House from hearing him'.[72] The letter was eventually read by the Marquess of Rockingham, whereupon the Duke of Richmond moved that it lie on the Table. This led to another short debate before Richmond's motion was rejected.[73]

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70. The division figures, according to the Manuscript Minute Books, were: Contents 15 votes and 6 proxies against, the Not Contents 45 votes and 25 proxies. Printed reports give the numbers as Contents 25, Not Contents 45. Almon, Parl.Register, ii, 156; Parl.Hist., xviii, 688.

71. Almon, Parl.Register, x, 208.

72. Ibid., p.209.

73. Almon, Parl.Register, x, 208-20; Parl.Hist., xix, 730-5; L.J., xxxv, 310.

The lords generally did not like lengthy sittings of the House, and most of their colleagues obliged by refraining from making long speeches. Set speeches on formal occasions, such as moving the Address in Reply to the King's Speech, rarely lasted more than a few minutes, while contemporaries only considered it worthwhile to note the length of a speech if the speaker was on his feet for an hour or more. All such references are to leading government and opposition spokesmen who, on average, always spoke for about an hour. Later in the period, speeches of an hour and a quarter, or an hour and a half became the norm for leading politicans. Some, however, possessed sufficient stamina and mental power to address the House for up to two hours: Lord Carteret opened the attack on Sir Robert Walpole on 13 February 1741 with a speech of two hours and five minutes.[74] Shelburne spoke for 'a full two hours' in bringing the debate of 26 November 1778 on the King's speech to a conclusion.[75] Lord Mansfield could so captivate the House when in full voice that those present in the Lords' debate on the North Briton resolutions, 29 November 1763, having already been entertained for two hours, 'would have been content to have heard him two hours longer'.[76] It is he, moreover, who holds the record for the longest speech worthy of comment by contempories; on the doomed Habeas Corpus Bill of 1758, Lord Mansfield 'spoke admirably for two hours and twenty five minutes'.[77]

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74. H.M.C. Egmont Diary, iii, 191.
75. Almon, Parl.Register, xiv, 46. Another example is Chatham's first speech on 28 November 1770 on the motion that the House of Commons did not have the final jurisdiction on the choice of its members; Debrett, Debates, v, 359.
76. Lyttelton Memoirs, ii, 649; Walpole,(Yale) Correspondence, xxxviii, 248.
77. Ibid., xxxvii, 529.

Speakers were obliged to address themselves to the House,[78] and hence, invariably began a speech with the salutation 'My lords', or some like words. The salutation might also be introduced during the course of the speech, and served to link various parts together as well as enable a peer to collect his thoughts if his memory began to fail him. Upon discovering that the second reading of the Irish Judicature Bill had not been made an Order of the Day for 11 April 1783, the Earl of Abingdon affected so much disappointment that he forgot the proper rule of address in the House of Lords. He insisted that it was the concern of the minister to give notice of the day and summon the House, whereas the Duke of Portland, recently appointed First Lord of the Treasury and nominal head of the new Government, answered that it was for the House to decide. Abingdon 'aloud replied, "No; it is your business" '.[79] Whereupon Lord Thurlow, dismissed from the woolsack a few days earlier by the new Ministers, 'pulled the Earl by the sleeve, and reminded him, that he was disorderly in personally addressing any peer':[80] he ought to have expressed his opinion by addressing the House.

A carefully observed rule of debate was that no peer should refer to another by name, but should use some form of distinction.[81] Apart from the most common form of reference which was 'to the noble lord who spoke last',[82] the favourite means of doing so was to name the colour of the ribbon worn by a peer: 'the noble earl in the blue

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78. Standing Order No.14 (1621).
79. Debrett, Parl.Register (2nd.ser.), xi, 108.
80. Ibid.
81. Standing Order No.19 (1621).
82. Almon, Parl.Register, v, 85.

ribbon'[83] or even 'the noble lord in red'.[84] Another alternative was to refer to the position of a peer in the House, such as 'the noble duke near the woolsack',[85] and 'the noble lord near the Table'.[86] The rule, however, only applied to peers present in the House: Lord Hervey suffered no reproof for naming Robert Walpole on 25 May 1742 when the Lords debated the Bill to indemnify persons who gave evidence against him, for the Earl of Orford, as he was now known, did not attend that day.[87]

It was also expected of the lords that 'all personal, sharp, or taxing speeches be forborne',[88] and the general observance of this rule earned for the Upper House its reputation as a place of order and decorum. Lord Mansfield made this his defence on 7 February 1775 when replying to the Opposition's allegations that he was the King's confidential minister. Mansfield rose 'in great passion' and said 'He thought it had always been the leading characteristic of that assembly, when contrasted with the other House, who too often descended to altercations and personal reflections, to always conduct themselves like gentlemen'.[89] Yet in the same debate Dr.John Hinchcliffe, Bishop of Peterborough,

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83. Ibid., p.83.
84. Ibid., p.63.
85. Ibid., p.48.
86. Ibid., ii, 14.
87. Parl.Hist., xii, 646 n; L.J., xxvi, 129-30,130-1. A peer present in the House could be named if he gave his consent to the proceeding, and had the option either to remain in the debating chamber or to retire. E.g., Walpole, Memoirs of George II, i, 313-4(1753); Walpole, Last Journals, i, 30(1772).
88. Standing Order No.15 (13 June 1626). This rule against asperity of speech was recommended by a Lords Committee for Privileges following some 'sharpness' in a Committee on the defence of the kingdom in 1626. H.L.R.O., Historical Collection 251, Precedent Book, f.145.
89. Parl.Hist., xviii, 282.

expressed his deep concern to see 'on every question relative to America...so much of your Lordships' time taken up in mutual charges and recriminations'.[90] America was not the only subject to arouse passions in the House of Lords. Peers frequently rebuked one another on the ground that 'it was against the Standing Orders of that august assembly to make any personal reflections'.[91] Contemporaries often remarked on the squabbling that occurred between peers in debate,[92] and during his term in office in the mid-1760s the Marquess of Rockingham complained to the King that 'the lords on the other side [were] not very polite'.[93]

Although all instances of misbehaviour were not censured, yet the House had its own criterion for judging when an offence had taken place. It is best expressed in the words of Lord Chancellor Apsley, uttered in response to Lord Lyttelton's motion of 15 December 1774 to dispense with the Order excluding members of the House of Commons from the Lords' chamber:[94]

> he always looked upon himself as a servant of the House, whose duty it was to see their orders enforced; but that as it seemed to be the desire of many to relax their Standing Order in this point, he thought the civility due from one lord to another should induce the House to come into the proposal; which was accordingly agreed to without further debate.

'The civility due from one lord to another', was an infringement which

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90. Almon, Parl.Register, ii, 54.
91. Parl.Hist., vii, 938(1722).
92. Walpole, (Yale) Correspondence, xxxviii, 258(1763).
93. Fortescue, Corr. of George III, i, 233 (Account of the Lords' proceedings on 16 January 1766).
94. Almon, Parl.Register, ii, 5.

could incur the wrath of the House. The affront caused by the Earl of Sandwich to the Duke of Grafton 'who was ill and sat out of place' on 10 December 1741, brought condemnation from Horace Walpole, who declared such conduct as 'indecent in such a boy to a man of his age and rank'.[95] Lord Lyttelton's speech on the Prussian treaty 1758 'provoked Lord Temple to a rude and silly answer',[96] while Lyttelton won praise from friends, strangers, and foes alike. This he attributed to the 'manner of my speech and reply. I kept my temper in both, and the decorum that suits and pleases the House of Lords. Temple did not, and had no wit to atone for the want of decorum'.[97] For the same reason, the Elder Pitt's speeches in the Lords were not always received with the appreciation to which he had been accustomed in the Commons:[98]

> The silence of the place, and the decency of debate there, were not suited to the inflammatory eloquence by which Lord Chatham had been accustomed to raise huzzas from a more numerous auditory. Argument, at least decorum, would be expected, not philippics.

Thus, in an assembly where civility, decency, and dignity were the key-words in the code of conduct, intemperate language which could, and did, fall in debate was frowned upon consistently, and immediately censured. Sir Thomas Robinson, 'being accidentally present' in the debate on the second reading of the Mortmain Bill, 20 April 1736, heard 'several remarkable expressions' from many lords, including the

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95. Walpole, (Yale) Correspondence, xvii, 231. Sandwich was 23 years old, and Grafton 55.
96. Lyttelton Memoirs, ii, 609-10.
97. Ibid.
98. Walpole, Memoirs of George III, ii,291(1766).

bishops.[99] A clear indication of the Lords' attention to language occurred on 28 June 1781. Two compensation bills were brought before the House, and in the debate on the first the Duke of Chandos 'called the whole a job, calculated to serve a favoured individual, at the expense of an exhausted public'.[100] The word was employed several times in subsequent speeches, while Lord Dudley 'entreated their lordships not to be caught by a popular word. The name of job, without any proof of its being so, had often turned out to be fatal'.[101] But it was the offensive language and terms used by peers against individuals or political groups which drew the greatest criticism. Lord Rockingham, while speaking for the second time in the debate on 16 April 1777 upon the King's message concerning the expenses of the royal household, drew attention to 'some violent expressions which had fallen from a noble Lord high in office', a reference to Lord Suffolk who was purported to have said 'That the conduct of what was called in this country opposition, was detestable, dangerous, and unconstitutional'.[102] In reply, Suffolk 'denied that he had made use of the word "detestable", and did not think it fair nor Parliamentary to have expressions imputed to him which he never used. (Here their lordships looked at each other with astonishment)'.[103] A year later, such heated language occurred in the debate on the state of the navy, 31 March 1778, that Lord Chancellor Bathurst felt obliged

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99. H.M.C. Carlisle MSS., p.168.

100. Debrett, Parl.Register (2nd.ser.), iv, 356. The Oxford English Dictionary defines 'job' (as understood until about 1785) as something for personal profit or private interest.

101. Debrett, Parl.Register (2nd.ser.), iv, 357. See also, p.369.

102. Almon, Parl.Register, vii, 82. Suffolk was Secretary of State for the North from 1771 to his death in March 1779.

103. Ibid.

to intervene in order 'to support the honour of the House'.[104] The Duke of Richmond asserted that there would be popular retribution against Lord Sandwich, Lord of the Admiralty, for opposing the motion: he would be 'dragged from his place. There would be insurrections of the people, who would put him to death. (Here his Grace was called to order, but he persisted in his argument, declaring he had a right to say what he did, and he would not be interrupted)'.[105] But it was not this which brought the Lord Chancellor from the woolsack. The Earl of Effingham, who had instigated the debate, followed Richmond, and claimed that his motions would be defeated because Sandwich had a 'servile majority' to follow him below the Bar.[106] Thereupon, Bathurst left the woolsack and angrily protested 'That if such insinuations, and such language were suffered to pass unnoticed, the House would no longer be looked up to as the moderator between the King and the people. The noble Earl had talked of a servile majority; were their Lordships to be so grossly insulted without a rebuke? He had sat in that House seven years, and never before heard so indecent a charge. A servile majority! The insinuation was not warrantable'.[107]

Persons whose names and reputations were not defended by the conventions of the House, or who were not furnished with a public apology, could resort to extra-parliamentary means for redress. In his speech moving an inquiry into the dismissal of the Marquess of Carmarthen and the Earl of Pembroke from the lieutenancies of their

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104. Ibid., x, 357.
105. Ibid., p.356.
106. Ibid.
107. Ibid., p.357.

counties, the Earl of Shelburne 'spoke with a peculiar vehemence' of a recent innovation in the army called 'occasional rank', and proceeded to inquire what qualifications a Mr.Fullerton possessed for his appointment as lieutenant colonel, never having served in the army before. He had, however, asserted Shelburne, 'been clerk to the noble Lord (Stormont) when on his embassy to France, where perhaps he might have acquitted himself very well with a pen, but never was acquainted with the use of the sword'.[108] Colonel Fullerton sought satisfaction for this defamation by challenging Shelburne to a duel.[109]

If offence was given in debate to a fellow peer, he had at his disposal the conventions of the House to force an apology from the offender.[110] The procedure for doing so, as established by Parliamentary practice, was exemplified in the House of Lords on 12 December 1721 when Lord Coningsby was reproached for reflecting on the Lords Justices during a debate on the Mutiny Bill. The Earl of Sunderland desired that 'the Earl Coningsby's words might be wrote down in order to have him sent to the Tower'.[111] Upon the intervention of Lord Harcourt, the offender was allowed an opportunity to explain himself, during which he apologised for the words used

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108. Parl.Hist., xxi, 218.

109. Leeds Memoranda, p.27. For an account of the whole incident, see Olson, Radical Duke, p.179.

110. E.g., Leeds Memoranda, p.43 (Hemington Enclosure Bill, 30 March 1781).

111. Timberland, History, iii, 199; Parl.Hist., xvi, 932. Failure to obtain a correct version of the offending words meant that this disciplinary action could not be pressed to its extreme. The Earl of Anglesey was not accused of treason in 1715 following his declaration against Oxford's impeachment because his words were not taken down. Parl.Hist., vii, 107-8.

and promised not to offend the House again.[112] The offender would only be sent to the Tower if found guilty of the offence, or if he refused to submit to the authority of the House and apologise. A full account of the incident of 26 May 1767 involving Lord Denbigh is to be found in the journal kept by the Duke of Bedford between 1766 and 1770. Lord Denbigh first made insinuations against a judge, and then 'in a very unbecoming manner' made a personal attack on Lord Mansfield. He was called to order on both occasions by Bedford and other peers, and after the second insult 'many lords cried out Bar! Bar! intending to bring him there on his knees to ask pardon of the House'. Denbigh, however, swallowed his pride and,from his place in the chamber, asked pardon of Lord Mansfield, who condescendingly did not insist on the offensive words being taken down by the clerk.[113]

The proper procedure to follow on such occasions was fully debated by the Lords on 25 April 1780 when, during a debate on the defence of Devon and Cornwall, the Duke of Manchester moved to resolve that Viscount Stormont, who had previously refused to explain part of an earlier speech, be 'requested to answer on his legs'.[114] Lord Ravensworth supported the motion.[115]

> There were numerous instances in their lordships' journals where lords had made use of improper expressions, upon which the House insisted on explanations; and in

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112. Timberland, History, iii, 199; Parl.Hist., xvi, 933.
113. Bedford Journal, i, 602.
114. Almon, Parl.Register, xv, 300.
115. Parl.Hist., xxi, 481.

> cases where the party who made use of the expression refused to answer, or give satisfaction to the House, he had been ordered into the custody of the Black Rod; and he believed, upon more than one occasion, had been sent to the Tower.

Earl Gower did not agree entirely with either side in the dispute, but confirmed the authority of the House in resolving all matters.[116]

> In this, as well as every other matter respecting the order of their lordships' proceedings, it belonged to the House to determine how far such desired explanations were or were not proper; otherwise it would be impossible to conduct business in either House of Parliament. Offensive words spoken in debate, either reflecting on the House itself, or directly or indirectly charging any of its members, subjected the speaker to censure, if he did not either explain or retract his words; or if they imported personal accusation, if he did not pledge himself to prove the accusation made against the party. There was no doubt but that this was the established usage of Parliament, time immemorial; and he so far agreed with noble lords who spoke to the question, that there were precedents to support the usage extant on their lordships' journals. If this was agreeable to the constant mode of proceeding, all that remained to be done was to see whether the conduct of the noble Viscount in the green ribbon brought him within the rule.

He thought not. Stormont again rose to speak, not to withdraw his words or to explain them, but to reassure the House that no reflection

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116. Ibid., cols.483-4.

on peers was intended. Manchester's motion was then withdrawn and the debate on the main question resumed. [117]

It was also customary on such delicate occasions, when the honour and dignity of individual peers and of the House were in question, that strangers present be ordered to withdraw. This was insisted on following Earl Temple's declaration regarding the King's hostility to the India Bill, 15 December 1783. Printed reports of the debate, therefore, come to a premature conclusion at this point, though it was later ascertained that 'the personal question was soon at an end, by mutual explanations of the rumour, without coming to any precise declaration on the part of Earl Temple of what occurred in the conference with the King...Earl Temple begged pardon of the House for giving them so much trouble'. [118]

Only one instance has been found in the period 1714-84 of a peer being committed to the Tower as a result of offending the House of Lords: this was in the case of the Earl of Pomfret in 1780, whose quarrel with the Duke of Grafton, however, occurred outside Parliament. [119] Peers who gave offence usually made a withdrawal and an apology. The responsibility for calling offenders to order rested with the peers themselves, who also decided how far to press the issue. On 5 December 1777, the Earl of Chatham commenced the second debate of the evening by moving for papers regarding the use of Indians with the British troops in America. After a speech supporting the motion by the Earl of Abingdon there followed a sharp altercation between Earl Gower,

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117. Ibid., col.484. Richmond's motion for a Committee inquiry on defence was rejected; ibid., col.491.

118. Debrett, Parl.Register (2nd.ser.), xiv, 69.

119. See infra., pp.512-5.

who objected to the 'late hour of the evening' to continue the matter,[120] and Chatham. The latter 'arose, and reproached the noble Lord with petulance and malignant representation...He was here called to order: he did not sit down, but chang[ed] the subject'.[121] Earl Gower returned the asperities of the noble Earl [and] declared, that nothing should prevent him from speaking his mind freely'.[122] The dispute continued, but no further comment was made by the House, nor any apology forthcoming. At the end of the debate, Chatham's motion was defeated by 40 votes to 18.[123] On 31 January 1782 the Duke of Richmond responded to Viscount Stormont's persistent refusal to answer a Parliamentary question put to him and other Ministers, by imitating the Viscount's manner and bearing.[124] Yet it was Stormont who was called to order for saying that Richmond had insulted the Government peers, and hence the House, by calling them a 'crew'.[125]

The most recorded incident of this kind was that of 14 March 1770 when the Earl of Chatham was called to order for asserting that Lord Camden had been dismissed as Lord Chancellor after casting his vote against the Government at the opening of the session. His speech was followed by shouts of 'To the Tower'.[126] The Earl of Marchmont then moved that the offensive words be taken down, a

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120. Almon, Parl.Register, x, 96.
121. Ibid.
122. Ibid., p.97.
123. Ibid., p.101.
124. See supra., p.60.
125. Debrett, Parl.Register (2nd.ser.), viii, 84-5. For the debate, see pp.81-88.
126. Debrett, Debates, v, 175.

motion which Chatham had the impudence to second himself, refusing to retract or explain them, and 'his violence was so great that he was with difficulty compelled to sit down'.[127] In the confusion that followed, Lord Sandwich moved to adjourn, while Lords Rockingham, Temple, Richmond, Shelburne and Lyttelton all reasserted Chatham's claim. After debate, the House gave leave for the motion for adjourning to be withdrawn so that Marchmont could put forth his conciliatory motion that there was no justification for Chatham's assertion. The House so resolved, and an account of the whole incident was entered in the journals.[128]

Peers could also be called to order if found to be ignoring other accepted rules of debate, such as the restrictions imposed on the content of speeches. No criticism could be made of an existing act of Parliament except on a motion for its repeal.[129] It was also contrary to Parliamentary procedure to refer to or quote words spoken on a former occasion.[130] Earl Gower's action in calling the Duke of Manchester to order on 10 December 1770 so as to prevent him divulging information concerning the defence of the nation while strangers, including foreign ministers, were present, set in motion the train of events which led to the rift in the relationship of

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127. Walpole, Memoirs of George III, iv, 67.

128. L.J., xxxii, 476; H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.34. The incident occurred while debating Rockingham's motion to consider the state of the Civil List — Albemarle, Rockingham Memoirs, ii, 167-8; Bedford Journal, i, 624; Chatham Corr., iii, 423-6 n; Debrett, Debates, v, 174-7; Grenville Papers, iv, 508-15; Walpole, Memoirs of George III, iv, 67-8.

129. E.g., Almon, Parl.Register, v, 144(1775).

130. E.g., Walpole, Memoirs of George III, ii, 83(1765); Almon, Parl.Register, v, 47(1775); Parl.Hist., xix, 328(1777).

the two Houses of Parliament, which was to last for about four years.[131] A Protest, entered by the Opposition following this incident, declared that Earl Gower had interrupted 'a most spirited but proper and decent speech, introductory to a motion of importance to the public safety... under pretence of speaking to order...in a manner equally insidious and disorderly'.[132] On 7 January 1752, Lord Halifax, speaking in the debate on the Saxon treaty, was twice interrupted by the Duke of Bedford, until he himself was called to order by the Duke of Argyll who angrily asserted 'that he had never seen such interruption given twice in one debate'.[133]

It was also contrary to the rules of debate to refer to other branches of the legislature. No direct reference was to be made to the House of Commons, but all references were to be couched in circumlocutory terms,such as 'the other place'[134] or 'the other House'.[135] In the debate on Chatham's Provisional Bill for settling the troubles in America, Earl Gower negligently contended that Chatham had in the past expressed quite different, belligerent, views towards the colonies, and when pressed to name 'the time and place',[136] Gower was forced to admit that he referred to a speech in the Commons. Chatham retaliated, denouncing 'such procedure in very severe terms, [and] said it was not decent or Parliamentary to mention words spoken out of the House'.[137] It was also considered disorderly to mention

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131. Walpole, Memoirs of George III, iv, 143-6.
132. L.J., xxxiii, 23.
133. Walpole, Memoirs of George II, i, 251. For another example, see Chatham Corr., iv, 3 n. (1770).
134. B.L.Add.MS.35878, f.37.
135. B.L.Add.MS.6043, f.52.
136. Almon, Parl.Register, ii, 27.
137. Ibid.

a member of the Commons by name: the Earl of Derby censured Abingdon for naming Fox on 15 December 1783 when the controversial India Bill was before the Upper House, insisting 'that that House [the Lords] knew nothing of Charles James Fox'.[138] Earl Temple, a leading opponent of the Ministry, contended, however, that it was perfectly permissible if the peer 'intended to incriminate him'.[139] Similarly, no disrespect was to be paid in debate to the Crown; hence the convention that the Speeches from the Throne were regarded as the words of the ministry. Furthermore, as Lord Carteret reminded the House on 18 November 1740: 'it is well known that His Majesty's name ought never to be brought into any of our debates'.[140] The purpose of such a rule was to safeguard the decisions of the House from being influenced by knowledge of the royal will. Hence the outcry in December 1783 after use was made of the King's name to secure the defeat of the East India Bill.[141]

The most difficult aspect of debate on which to keep order, however, was on the rule that speeches should be relevant to the question before the House.[142] There are few instances of the House directly enforcing this rule, but strict adherence to the rules could at times obstruct opposition on an issue. On 6 June 1753, when the Commons' insignificant amendments to the Marriage Bill were discussed in the Lords, Lord Chancellor Hardwicke insisted that the Duke of Bedford's objections should be voiced against each amendment individually

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138. Debrett, Parl.Register (2nd.ser.), xiv, 43.

139. Ibid. Compare the debate on the Contractors Bill, 1 May 1782, when Fox and the Lower House were both mentioned by name. Parl.Hist., xxii, 1371,1372.

140. Ibid., xi, 630.

141. See supra., p.412.

142. E.g., Debrett, Parl.Register (2nd.ser.), iv, 45.

and not be criticised generally at the second reading.[143] Hardwicke was taking particular care of the measure which he had drafted. Observance of the rule depended mainly on the good sense of those speaking; but the House of Lords appears to have permitted a considerable degree of liberty on this point. During the 1770s the American issue crept into debate, whatever business was discussed.[144] It had been agreed between Government and Opposition that the motion to adjourn for the Christmas recess on 11 December 1777 would be an opportunity to discuss various subjects, including America and national defence.[145] Lengthy debates, in particular, tended to wander from the point,[146] and regularly centred more on personalities than on the appropriate issue.[147] George III made a frank appreciation of the nature of debates in the House of Lords in a letter to the Duke of Grafton on 10 December 1766:[148]

> I don't think a debate of 7 hours, when all agreed in approving the committing the Indemnity Bill, quite worthy of so noble an assembly as the House of Lords, as the whole time must have of necessity been spent either in personalities or matter entirely foreign to what was under the consideration of the Lords.

The dignity of the Upper House demanded that every speaker in debate be heard with respect. It was for this reason that the Lords'

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143. Parl.Hist., xv, 84 n.
144. E.g. The first reading of the Malt Bill, 15 November 1775, MSS.North d.25, ff.63-4.
145. Portland Papers, PwF 9119; Parl.Hist., xix, 592-614.
146. Chatham Corr., iii, 247.
147. B.L.Loan MSS. 57/1, letter 64.
148. Fortescue, Corr. of George III, i, 427. The question before the House had been whether to commit the Corn Embargo Indemnity Bill.

Roll of Standing Orders included several rules relevant to the conduct of the members of the House while business was in progress. For example, peers were required to leave their places as little as possible in order to avoid inconveniencing their neighbours and cause commotion in the House.[149] No private conversations were to be held between peers while business was in progress; those who did wish to consult one another were desired to retire below the Bar, otherwise the Speaker was to halt proceedings and call them to order.[150] These rules, though generally observed, could not ensure that every peer would be listened to attentively and heard in silence. At one stage in the proceedings on 21 April 1766, all eyes and ears in the whole assembly were not centred on the business in progress but on the 'very long conferences, first [between] my Lord Camden and the Chancellor [Northington], for half an hour; afterwards, my Lord Camden and the Duke of Grafton retired into a private room, and were together a full hour; the Duke of Grafton then went to the Lord Chancellor, and whispered [to] him for half an hour'.[151] Few issues retained the interest of the main body of peers for any length of time; hence the House became a scene of continuous motion as peers quitted the boredom of the debating chamber to take refreshments, either in the Prince's Chamber or in the nearby coffee-houses,[152] to return later when a more important and interesting item of public business had been initiated.[153] Every peer who entered the Parliament

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149. Standing Order No.13 (1621).

150. Ibid., No.18 (30 March 1670).

151. B.L.Add.MS.32975, f.9. The conversation may have been about bringing William Pitt into Administration.

152. Torbuck, Debates, viii, 355.

153. Mar and Kellie MSS., S.R.O., GD 124/15/1197/6 (23 January 1720).

Chamber when the House was in session was expected to bow to peers already in the House, and to receive the same show of courtesy in return,[154] a rule which, if observed, was certain to disrupt the business at hand.

Speakers in debate, therefore, had to contend to make themselves heard against a background of noise caused by the conversations of fellow peers, the presence of strangers below the Bar, whether there out of curiosity or on business, and the continuous movement within the House. Numerous references to the difficulty of hearing debates in the Lords are to be found in contemporary sources.[155] Ironically, several of the most chaotic scenes in the House occurred when efforts to impose order got out of hand. These were characterised in particular by loud shouting from individuals or groups of peers. Interruptions of this kind, however, could be indications of approval as well as dissent. During the debate on the State of the Nation on 11 February 1778, the Earl of Hillsborough called on the Duke of Richmond to explain some remarks he had made on a previous occasion. Lord Mansfield showed his approval of the Duke's reply by repeatedly calling at one point, 'Hear him! hear him!'[156] Nothing, however, compared to the scene of confusion and uproar in the House of Lords on 10 December 1770 when the Standing Order to exclude strangers from the Chamber was enforced.[157] The motion to do so was followed by such a clamour as peers shouted their support of the proposal that Lord Chatham

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154. Standing Order No.11 (1621).

155. E.g., B.L.Add.MS.32988, f.186(1768); Debrett, Parl.Register (2nd.ser.), iv, 226(1781).

156. Chatham Corr., iv, 502.

157. See supra., pp.330-1.

failed to make himself heard above the din, and even sent the Duke of Richmond to draw the Speaker's attention that he wished to speak, but to no avail. The Opposition peers entered an angry Protest in the journals against the affair.[158]

> When the peer [Duke of Manchester] was thus improperly and groundlessly interrupted, and the Standing Order no.112 relative to the clearing of the House read, another peer [Chatham] getting up to speak to order upon this astonishing interruption, could not obtain a hearing. The irregular, clamorous, and indecent behaviour of several lords who called out incessantly, "Clear the House! Clear the House!" rendered all argument, and all representation upon the subject, utterly impracticable.
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> This indecent and hitherto unprecedented uproar was continued, even when the noble Lord on the woolsack [Lord Mansfield] stood up with his hat off to explain order. The same tumult, which at first interrupted a Lord in his speech, and did not permit the Lord who spoke to order to be heard, prevented also any information from the woolsack.

Contemporary opinion of the debates in the House of Lords was that they were more formal than those of the Lower House.[159] The presence of several talented lawyers among the membership of the House contributed to the quality of its debates; but complicated arguments were not greatly appreciated, and the introduction of

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158. L.J., xxxiii, 23.
159. See supra., p.406.

legalities into debate was certain to bring proceedings to a premature close, as it imposed even greater limits on the number able to participate.[160] Most of the Lords' proceedings conformed to a contemporary description of one of the most significant debates of the period, namely that on the South Sea Company inquiry of 24 May 1733 which, according to Sir Thomas Robinson, was 'a very dry one, and chiefly upon Acts of Parliament, and figures'.[161]

Proceedings in the Upper House may in general have been solemn, but they were not always somnolent. Tempers rose high in the debate on the Septennial Parliaments Bill on 14 April 1716;[162] one report of the American measures before the Lords in March 1766 described the debates as 'warm and acrimonious',[163] while another asserted that there had been much 'good speaking'.[164] The Earl of Chatham's motion on 20 January 1775 that the British troops be removed from Boston, gave rise to a 'noble' debate in the Lords;[165] but the sharp speeches made on 14 March 1770 on the question of the Civil List expenses, earned the name of a 'violent' debate.[166]

The main characteristics of the Lords' proceedings, however, were their dignity and courtesy. Despite the heated and bitter differences of opinion which the American war occasioned during the

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160. Chatham Corr., iv, 38.

161. H.M.C. Carlisle MSS., p.118. The debate on the Falkland Islands affair, 22 November 1770, was in Chatham's opinion, 'indifferent enough'. (Chatham Corr., iv, 1). The Greenwich Hospital inquiry on 16 February 1779 was followed by a 'very tedious and...very uninteresting discussion'. Almon, Parl.Register, xiv, 127.

162. Torbuck, Debates, vi, 380; Timberland, History, iii, 29.

163. Chatham Corr., ii, 403 n.

164. B.L.Add.MS.51406, f.136.

165. Chatham Corr., iv, 377.

166. Bedford Journal, i, 624.

1760s and 1770s, the Upper House maintained its rule of courtesy, as illustrated by an incident involving the Earl of Chatham in May 1774. Lord Chatham, having missed the debates on the major American legislation of the session due to illness, was offered an opportunity by North's Government to make known his views on the subject. Lord Lyttelton conveyed the message to Earl Temple with considerable excitement.[167]

> I snatch this minute to tell your Lordship, that the Ministry seem desirous that Lord Chatham should again rise, though, as they hope, not in fury, for if he does, they are annihilated. It will not be possible to delay the King's assent to those bills that are now before the House; but there is another American bill which will serve Lord Chatham's purpose, and that they will put off on his account till Wednesday. It is of no great consequence, indeed; but as a part of the great whole, it will be sufficient to warrant his Lordship's appearance.

The occasion for Chatham's reappearance in the House was the third reading, on 26 May 1774, of the Bill for quartering troops in North America. The Earl rose to his feet immediately after the Order of the Day was read, and he used the opportunity to make a comprehensive review of the American issue. He voiced his disapproval of the Boston Port Act, and the tea tax, and denied Britain's right to tax the colonies. He advised the Government to adopt conciliatory policies, not punitive measures, in order to win the Americans'

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167. Chatham Corr., iv, 344-5.

co-operation. However, he did assert that he would support the latter course of action if the colonists rejected the first. Only two others spoke in the debate : Lord Suffolk, the Northern Secretary, spoke very briefly, and was answered by Earl Temple. The question was then put to pass the Bill, which was carried by 57 votes to 16.[168] The civility shown to Chatham was not an exceptional instance : a peer known to be particularly interested in a subject or to possess special knowledge, would be provided with an opportunity to speak. Hence, Lord Camden remarked on 11 March 1779 , the first day of the Greenwich Hospital inquiry , that when Lord Bristol, who was suffering from gout, would be well enough to attend, one of the sessions of the inquiry would be devoted to the state of the navy.[169]

Most peers, however, possessed no interest or inclination to participate in debate, a fact demonstrated by the small number of peers whose names appear in the printed reports of debates, and confirmed by manuscript sources, as compared with the number who actually attended the House.[170] Periodically, therefore, and with the co-operation of the Crown, a ministry would recommend the creation of new peers who would be expected, and could be relied upon, to speak and vote in favour of the government's measures in the Lords,[171] or who, in the opinion of Horace Walpole, were 'to add more dignity to

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168. Parl.Hist., xvii, 1354-6; L.J., xxxiv, 217.

169. Pratt Papers, U 840/C 173/39. See also supra., p.397.

170. E.g. After the first reading of the Regency Bill on 29 April 1765, the Lords then debated a motion to postpone the Committee stage of the Bill to Regulate the Privilege of Parliament. In his account of the day's proceedings to the King, Lord Halifax described this as 'a short debate...though there were many speakers'. (Fortescue, Corr. of George III, i, 79). Yet only ten peers are listed as having spoken,out of 129 peers present on the day, and compared to the 113 who took part in the division (L.J., xxxi, 160,163; Sainty and Dewar, Divisions).

171. E.g. B.L.Add.MS.32938, f.20(1762).

the silence of the House of Lords'.[172] In December 1760, Lord Talbot wrote to George Dodington that 'Of the names who are to add lumber to the House of Lords, some I much approve; Lord Mansfield and yours are each a plus that will allow many minuses in our political, algebraical calculations of ability'.[173]

Many of those thus ennobled honoured their obligation to their ministerial patrons (even when they had been turned out of office) and regularly addressed the House on their behalf.[174] Nevertheless, business in the House of Lords was, for the most part, conducted by the Leader of the House and the foremost politicians on both sides. Many of these were senior members of the peerage. It was they who were most familiar with the code of conduct in the Lords and the procedures of the House : tactical motions, as well as those for introducing major items of public business, were usually instigated by ministers or leading opposition peers.[175] By the end of the period under study

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172. Walpole, (Yale) Correspondence, xxxvii, 270.

173. H.M.C. Various VI, p.48. William Murray had been created Lord Mansfield on 8 November 1756. Dodington was created Lord Melcombe on 6 April 1761, and took his seat in the Lords on 3 November 1761 (L.J., xxx, 109). He died on 28 July 1762.

174. E.g., Lord Hervey, son of the Earl of Bristol, summoned to Parliament in his father's barony in 1733. Spoke against the Bill against depriving army officers of their commissions, 13 February 1734 (Parl.Hist., ix, 329-33); for committing the Quakers Tithes Bill, 12 May 1736 (ibid., ix, 1216-8); for the Government in the debate on the Spanish Convention, 1 March 1739 (ibid., x, 1190-1208). Lord Lyttelton was raised to the peerage by the Pitt-Newcastle Administration in 1756 and became a frequent speaker in the Lords. The second Earl of Egmont was given a British peerage in May 1762. Both these peers spoke for their respective sides on the Regency Bill, 1 May 1765 (Fortescue, Corr. of George III, i, 80).

175. E.g. The previous question on 26 May 1767, and the adjournment motion on 2 June 1767, were moved by the First Lord of the Treasury, the Duke of Grafton (Parl.Hist., xvi, 361 n, 362 n). The previous question on 22 November 1771 on the Falkland Islands debate was moved by Viscount Weymouth, Southern Secretary October 1768 to December 1770, and again from November 1775 to 1779 (ibid., xvi, 1083).

it had become customary for the House to await the arrival of government peers before entering into public business of any importance.[176] On 6 May 1778, the Lord Chancellor was forced to apologise at the commencement of the debate at the second reading of the Land Forces Recruiting Bill for the non-attendance of both Secretaries of State, the Earl of Suffolk and Viscount Weymouth, whose absence kept the debate short, though the Lord President, Earl Gower, was present. The division had been concluded when Weymouth, the Southern Secretary, appeared in the chamber and 'apologised for his not coming down earlier, [but] said that he did not know that the Bill would be opposed'.[177] A year later, on 27 May 1779, after the Marquess of Rockingham had moved for the Lords' Address of 11 May 1779 relating to Ireland, and the King's Answer, to be read, 'a profound silence ensued for some minutes, not one of the Cabinet ministers, properly called, being present'.[178] Rockingham rose a second time to address the House, and a very short debate then followed, the Marquess being supported by the Duke of Richmond, and answered only by the Lord Chancellor and Earl Gower for the Government.[179] If ministers showed no inclination to continue a debate, other disinterested members of the House certainly had no disposition to do so, and a combination of both these factors ensured that protracted debates in the House of Lords were the exception rather than the rule: many dwindled to a natural end as no further speakers rose to their feet; while others were brought to a quick conclusion by the peers' refusal to hear any more speeches and their impatience for the question to be put.

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176. E.g. Debrett, Parl.Register (2nd.ser.), viii, 81 (31 January 1782).
177. Almon, Parl.Register, x, 404; for the debate, pp.404-5.
178. Ibid., xiv, 375.
179. Ibid., pp.375-80.

XIII

DECISIONS

All questions had to be decided by a vote, a simple majority being required to affirm or negative a question. The question would be put by the Speaker of the House,[1] which he could do only from the woolsack.[2] Very occasionally, a motion, usually a formality, would be passed unanimously, and it would be recorded in the Journals as having been carried nemine contradicente or nemine dissentiente.[3] It was a practice, however, that contemporaries scrutinised carefully to preserve from abuse. When the third reading of the Boston Port Bill was passed nemine dissentiente on 30 March 1774, William Dowdeswell, the leader of the Rockinghams in the Commons, advised the Marquess that this was a fair cause for a Protest[4] for it was 'unfair to pretend unanimity at passing the Bill, after the question for committing it had been regularly opposed'.[5] The Duke of Richmond, referring to the same incident a year later, claimed it was 'totally unusual and unparliamentary to do so, when an opposition had been made to the bill in any stage'.[6] A few years later, on 17 May 1782, the Irish Earl of Shelburne proposed two resolutions to the House, the first being that the Act of 6 George I 'for securing the dependency of the Kingdom of Ireland upon the Crown of Great Britain' be repealed. The motion was carried, but when an unidentified peer desired that it be recorded

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1. Standing Order No.2 (1621).
2. Harrowby MSS., document 35(q), 23 September 1755; e.g. Almon, Parl. Register, ii, 65(1775).
3. E.g., L.J., xxxi, 209(1765); xxxi, 51(1780).
4. For this practice, see infra., p.447.
5. Rockingham Memoirs, ii, 240 (8 April 1774); L.J., xxxiv, 104.
6. Almon, Parl.Register, v, 99. For the speech, see pp.98-9.

as a unanimous decision of the House his suggestion met with shouts of protests.[7]

The Roll of Standing Orders reveals that the Lords had three procedures for deciding a vote of the House. The original method of settling all questions in the House of Lords was the 'individual voice' procedure by which each lord, in reverse order of precedence, rose in his place, uncovered, and simply declared his opinion to be either Content or Not Content.[8] The clerk would then total the number of votes given on each side. By the eighteenth century, however, this laborious process had been superseded by another, and was henceforth retained for use only on formal occasions, being the method of voting at impeachments and trials of peers: and it was that used in arriving at a decision on bills granting a general pardon.[9] Nevertheless, even as late as 1775 it could still be asserted that the individual voice method was 'the only regular mode of taking the sense of the House'.[10]

In place of the individual method of voting, the House of Lords gradually adopted the system in use in the House of Commons whereby the opinion of the lords was declared collectively. This development was aided and promoted by the collapse of the seating order within the Upper House.[11] Responsibility for determining the question lay with the Lord Chancellor or his deputy as Speaker:[12] thus, having

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7. Debrett, Parl.Register (2nd.ser.), viii, 299-312; L.J., xxxvi, 503.
8. Standing Order No.20 (1621).
9. See supra., p.81. The last instance of such a bill was in 1747, L.J., xxvii, 135,137.
10. Duke of Richmond on 22 May 1775. Almon, Parl.Register, ii, 164-5; also infra., n.16.
11. See supra., pp.290-309.
12. In Committees of the House this was done by the Chairman. See infra., p.479.

asked their lordships whether they agreed with the motion, he instructed them as follows:[13]

> "As many of your Lordships as are of that opinion will say Content." "As many of your Lordships as are of the contrary opinion will say Not Content." Then the Lord Chancellor says (if it shall appear to him) "The Contents have it" or "The Not Contents have it".

This was to take place while the peers remained seated in their places.[14] Very often, all that the Lord Chancellor had to aid him as to which side he should declare for was the volume of noise as the lords shouted their opinion; easy enough theoretically if there was a clear and large majority on one side,[15] but totally unsatisfactory if the numbers were more evenly balanced.[16] Any lord, however, could challenge the decision and call for a division.[17] Yet many divisions were immediately waived at this point, when the peers who had demanded them realised how little support they had.[18] The collective voice procedure, therefore,

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13. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.3.
14. Standing Order No.21 (13 March 1671).
15. C.f. infra., p.454.
16. Failure to give any opinion could also cause confusion. On 11 May 1775, when the Lord Chancellor called for the lords' collective opinion in the case of Hill v St.John, there were only 9 peers in the chamber. Five of these, though in favour of reversing the judgement, remained silent, while the remainder declared themselves against. The Lord Chancellor consequently declared the case lost. This led to a warm debate on 22 May when the Duke of Richmond supported the petition for a rehearing of the case, and moved for an inquiry into the voting on the previous occasion. After a heated argument, Richmond's motion too was lost. Almon, Parl.Register, ii, 164-5; L.J., xxxiv, 443-4,464,474.
17. H.L.R.O. Parliament Office Papers 74/1, John Croft's Precedent Book, p.3. Harrowby MSS., document 35(q); e.g. on 3 June 1782 the Lord Chancellor declared the vote on the question to pass the Revenue Officers Bill in favour of the Not Contents. A division was insisted on, and the Bill passed by 34 votes to 18. Debrett, Parl.Register (2nd.ser.), viii, 334-40.
18. E.g., Fortescue, Corr. of George III, i, 287 (26 March 1766); Debrett, Parl.Register (2nd.ser.), iv, 405 (12 July 1781); xi, 275 (7 July 1783).

remained the most popular mode of voting in the House of Lords, and in most cases was considered sufficient.

The first description of a Lords division dates from 1610, on which occasion the peers were counted in two groups, the Contents standing while the Not Contents remained seated.[19] This practice continued until the division on the Test Bill, 21 April 1675, when 'Some of the lords being unsatisfied whether the question were resolved in the affirmative or the negative, the lords (it being candlelight and therefore difficult to tell the House) who gave their Contents withdrew below the Bar for the easier counting of the House'.[20] This was the procedure accepted as a Standing Order of the House in 1691.[21] It remained the standard procedure for divisions in the House of Lords until 1857 when voting in separate lobbies was introduced.[22]

When a division was to be held, the doors of the House were closed,[23] and the Lord Chancellor ordered that the debating chamber be cleared of all strangers.[24] He then appointed two tellers of opposing views who were 'generally of equal degree but not of first rank or old members',[25] having first asked of each lord 'if he will

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19. E.R.Foster (ed.) Proceedings in Parliament 1610, i, 196.
20. H.L.R.O., Manuscript Minute Books, H.L., xix, 21 April 1675.
21. Standing Order No.22 (25 November 1691).
22. E.g., Almon, Parl.Register, ii, 99 (21 March 1775); Sainty and Dewar, Divisions, p.9.
23. E.g., B.L.Add.MS.33035, f.385; the Earl of Plymouth was shut out of the division on the motion to commit the Stamp Act Repeal Bill, 11 March 1766.
24. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.3., e.g. B.L.Add.MS.6043, f.119(1742); ibid., Add.MS. 35614, f.240 (1778).
25. Harrowby MSS., document 35(q); also H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.3.

be pleased to tell'.[26] After their names[27] had been announced, the two peers proceeded to tell the House together, commencing with the Not Contents,who had remained within the Bar so as to give a negative vote to the motion.[28] The Lord Chancellor, being a member of the House, had a right to vote like any other peer since his was not a casting vote like that of his counterpart, the Speaker of the House of Commons.[29] However, he did not leave the woolsack to vote, but gave his opinion on being required by the tellers.[30] The tellers also included themselves in the final total of votes , another practice contrary to the procedures of the Lower House. When all had been told, the senior of the two tellers delivered the result, written on a piece of paper, to the woolsack.[31] The final figures included the votes of the peers present and the proxies (if called for)[32] , whereupon the Lord Chancellor announced the total for each side separately, and

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26. Harrowby MSS., vol.1128, 12 November 1747. No examples of refusals have been found other than the incident of 8 December 1711. For an account, see J.J.Cartwright (ed.) The Wentworth Papers, pp.222-3.

27. The tellers are identified in H.L.R.O. Manuscript Minute Books, H.L., where the division figures are also to be found. These details are not included in the Lords Journals.

28. Harrowby MSS., document 35(q).

29. Thomas, House of Commons, p.253.

30. May, Parliamentary Treatise, p.215.

31. The tellers concerned themselves only with the numbers that voted; it was not their business to compile division lists. These appear to have been drafted by political leaders after the event, e.g. B.L.Add.MS.32981, f.145(1767); Portland Papers, PwF 6918(1767). The assistance of a peer familiar with the membership of the House would be invaluable in these circumstances, e.g. B.L.Add.MS.33037, f.57 (26 May 1767). Furthermore, the officers of the House may also have been involved: certainly copies of the daily presence lists and the entries in the proxy books were available to peers on request and these were used in the compilation of the lists, e.g. B.L.Add.MS. 32966, ff.152,156-7 (2 April 1765); Add.MS.33037, ff.37-9 (22 May 1767).

32. Infra., p.435.

then declared the question won by the majority.[33]

The tellers' role was clearly a responsible one. At the start of the period, the lords who were chosen as tellers varied widely, and few performed the duty frequently. Gradually, however, during the course of the eighteenth century, telling became a more specialised task, as indicated by the higher service record of Lords Gower (1716-41), Bathurst (1717-56), De La Warr (1725-63), Sandwich (1741-83), Effingham (1774-82), and Radnor (1776-83).[34] The tellers might be selected from the speakers in the preceding debate,[35] though not necessarily so. Sometimes the peer who had made the motion or moved an amendment was appointed teller.[36] There is also scanty evidence that one of the tellers might be the peer who had called for a division.[37] It was not

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33. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.4. The earliest comprehensive account of the Lords' procedure at divisions is to be found in H.L.R.O., Historical Collection No.59, John Relfe's Book of Orders, p.683.

34. The dates are those when the peers first and last served as tellers: Lord Gower (1716-41) 39 times; Lord Bathurst (1717-56) 69 times; Lord De La Warr (1725-63) 87 times; the Earl of Sandwich (1741-83) 93 times; the Earl of Effingham (1774-82) 53 times; the Earl of Radnor (1776-83) 31 times.

35. E.g., the Earl of Dorset spoke in favour of committing the Septennial Parliaments Bill on 14 April 1716, and told for the majority. Torbuck, Debates, vi, 380-1. Both tellers, the Earls of Chesterfield and Cholmondeley, spoke in the debate of 11 May 1739 on the question of the augmentation of the armed forces. B.L.Add.MS.6043, ff.11,13. Lords Lyttelton and Shelburne spoke repeatedly at the second reading of the American Trade Prohibitory Bill on 15 December 1775, before telling the vote. Almon, Parl.Register, v, 132-6,139-41, 146-50,151. For all examples, see also Sainty and Dewar, Divisions.

36. E.g., Lord Halifax initiated the debate on 28 February 1740 by moving that a message of supply,sent to the Commons only, was against the privilege of the Lords. He then told for the minority in the division. B.L.Add.MS.6043, f.23. Lord Suffolk moved the opposition amendment to the Rockingham Administration's American resolution on 4 February 1766, and was teller for the majority in the division. Fortescue, Corr. of George III, i, 256. The motion for an Address of Thanks following a message from the King was made on 16 April 1777 by the Earl of Derby, who then acted as teller for the majority in the first of three divisions that day on the subject of the Civil List. Almon, Parl.Register, vii, 62-5.

37. E.g., S.R.O. GD 45/14/352/10 (2 June 1711) quoted in Jones and Holmes (eds.) Nicolson's London Diaries, p.93; B.L.Add.MS.32982, f.391 (23 June 1767).

customary, however, to choose the senior political leaders of either side of the House,[38] and on no known occasion between 1714 and 1784 did a member of the spiritual bench act as a teller. Furthermore, evidence suggests that no division of the Lords was official unless the peers were told. On a few rare occasions it appears that the House did divide, but peers seeing how small was their following waived insisting on a count, and the question was therefore judged to have been decided by the collective voice procedure.[39]

If divisions resulted in a tie, the question was declared for the Not Contents and the motion lost 'according to the rules or orders of the House, which prefer the negatives in all equal divisions'.[40] Such decisions were originally noted in the Journals by the words 'Then, according to the ancient rule in like cases, "semper praesumitur pro negante" '.[41] This practice, however, fell into abeyance for, by the eighteenth century, tied decisions were indistinguishable in the Journals from any others resolved in the negative.[42] One refinement only existed to this rule: since the question in legal cases was

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38. This deduction is made from the absence of their names from the list of tellers. Where there is an exception, as in the case of the third Duke of Portland, it appears to have been for a special purpose. Portland acted as teller but once in his career, namely, in the second division on 13 May 1778 when he told those in favour of the motion that the Lords should attend the funeral of the Earl of Chatham.

39. E.g., 22 March 1753: B.L.Add.MS.35877, f.111; Dodington Journal, p.212; Walpole, Memoirs of George II, i, 332. 10 March 1766 : Fortescue, Corr. of George III, i, 278.

40. H.L.R.O., Historical Collection 45, Nicolson Diaries, 11 January 1703.

41. E.g., L.J., xiv, 167,168 (1689).

42. E.g., Baynes v Bertie, 28 February 1728 (ibid., xxiii, 198); South Sea Company Accounts, 24 May 1733 (xxiv, 279); Chatham's funeral, 13 May 1778 (xxxv, 484). The sole exception is the case of Alexander v Montgomery and Co. (19 February 1773) where the names of the tellers and the division figures, as well as the ancient wording, are given in the Journals (xxxiii, 519).

'put for reversing and not for affirming'[43] this meant that, upon an equal division, the judgement of the lower court would be ratified, not reversed.[44]

It was a feature unique to the House of Lords that peers present when a question was put could also vote for absent lords who had left their proxies. This privilege whereby one peer carried another's 'voice in his pocket'[45] originated in the custom that a peer had to receive leave from the King to be absent from Parliament, which would only be granted on condition that a proxy be appointed to represent him in the House of Lords. The Lords' Standing Orders in the eighteenth century continued to endorse this rule, but a resolution taken by the House in January 1690 suggests that, in practice, it was no longer strictly necessary to obtain the King's licence before issuing a proxy.[46]

> The question was put, "Whether a lord, who has been absent all this session of Parliament without the King's leave, and has the leave of this House, may give his proxy?" It was resolved in the affirmative.
>
> Then the question was put, "Whether a lord who has been absent all this session of Parliament without the leave of this House, shall make his proxy?"
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> It was resolved in the affirmative.

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43. Standing Order No.56 (7 December 1691).
44. E.g., L.J., xxxiii, 519.
45. B.L.Add.MS.33069, f.381. Proxies were last used in the 1864 session of Parliament. J.C.Sainty, 'Proxy Records of the House of Lords, 1510-1733', Parliamentary History Yearbook, i (1982), 162.
46. L.J., xiv, 424 (23 January 1690).

Therefore, in the eighteenth century the granting of a proxy was the private concern of each peer. This is substantiated by the debate of 13 May 1742 when the Lords' Roll of Standing Orders was taken into consideration. During the debate, Lord Abingdon moved 'that since no lord now ever asked leave of the King to leave the House and make a proxy, that might be left out of the Orders of the House, and out of the forms of proxies'.[47] Much, however, depended on the inclination of each individual peer and the more conservative adherence of some to ancient custom for, in reply, Lord De La Warr claimed that several lords did seek the King's permission before leaving town, and, he added, 'all ought to do it'.[48]

Many of the rules governing the use of proxies were embodied in the Standing Orders of the House; others were unwritten conventions. A continuing link with the ancient basis of the right of proxy was the custom that no peer could give his proxy unless he had previously attended Parliament and taken the oaths.[49] One of the earliest Standing Orders stipulated that no peer should hold more than two proxies,[50] although it was contended that this restriction had been imposed only when 'once a single lord by the help of his proxies outvoted the rest of the House'.[51] On 13 May 1742, Lord Abingdon moved to increase a lord's quota of proxies to three, but he failed to carry any support in the House.[52] By the same Standing Order of

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47. B.L.Add.MS.6043, f.120.
48. Ibid., ff.120-1.
49. E.g., H A 13211 (Hastings MSS.), 4 March 1731. See also H.M.C. Fortescue MSS., vii, 219 (1804).
50. Standing Order No.79 (25 February 1626), e.g. H.M.C. Carlisle MSS., p.126(1734); Chatham Corr., iii, 269(1767).
51. B.L.Add.MS.6043, f.120.
52. Ibid., ff.120-1.

1626 a peer could only nominate a member of like kind to be his representative; that is, the proxy of a spiritual lord could not be entrusted to a lay peer.[53] Once issued, the proxy deed[54] could be presented by the recipient at the House of Lords, and the names of both the proxy-giver and the proxy-holder would then be entered in the proxy books by a clerk.[55] The proxy was valid for the duration of the session, unless annulled by the personal appearance of the lord concerned at the House.[56] If the peer attended Parliament, the King's leave, theoretically, had again to be procured before he could renew his proxy.[57]

In 1695 the House ordered that lords had to vote for their proxies if they themselves voted in the question.[58] In order to cast these votes, however, a call for proxies had first to come from the floor of the House.[59] The clerk at the Table, referring to the proxy books, would then call over the names of the lords who held proxies, each of whom would rise in his place, uncover his head, and cast the proxy vote or votes he held by declaring whether his absent colleague be 'Content' or 'Not Content'.[60] These figures would be added to those of the

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53. Standing Order No.79 (25 February 1626), e.g., B.L.Add.MS.32982, ff.89, 138,356(1767); P.R.O., SP 35/48. f.9(1724); H.M.C. Carlisle MSS., p.481(1781).

54. E.g., H.L.R.O., Historical Collection 61; B.L.Egerton MSS.3505, f.101.

55. E.g., H.L.R.O., Proxy Books.

56. Standing Order No.80 (25 April 1626); e.g., H.L.R.O. Historical Collection, 45, Bishop Nicolson Diaries, 16 January 1703; Harrowby MSS. document 21 (part III B), 22 June 1748. This was the official procedure, but the Proxy Books reveal that proxies could also be cancelled by letter. See infra., n.68.

57. Standing Order No.81 (25 April 1626) obviated by the 1690 resolution of the House.

58. Standing Order No.84 (11 February 1695).

59. Ibid., e.g. B.L.Add.MS.47584, f.9(1763); also ibid., Add.MS.32975, f.1 (1765).

60. May, Parliamentary Treatise, p.215; e.g., Almon, Parl.Register, xv, 212 (1780).

peers who had actually taken part in the division, and the total presented to the Speaker.[61]

Although there were no hard-and-fast rules as to how peers should cast these votes, it was customary for the absentee lords to entrust their proxies to peers of like views as themselves.[62] This was not always so. In June 1714, Bishop Nicolson gave his proxy to his friend Bishop Wake who, on the third reading of the Schism Bill on 15 June, consequently voted for both sides of the question, giving Nicolson's vote in favour and his own against the Bill.[63] Almost sixty years later, while describing the Lords' debate of 8 March 1774 on a Bill to make Grenville's Election Act perpetual, a debate which ended without a division, Earl Temple wrote that 'The greatest piece of fun is to think of Lord Guilford giving his proxy to Lord Boston in favour of the Bill'.[64] Such incidents in the latter part of the period were usually careless mistakes. Most peers, if reliant on others to find them a proxy, nevertheless wished to know who their representative was to be, before completing the proxy deed.[65] The Duke of Newcastle's

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61. H.L.R.O. Parliament Office Papers 74/1, John Croft's Precedent Book, p.4. See also supra., p.430.

62. May, Parliamentary Treatise, p.220; e.g., B.L.Add.MS.32966, f.99. Portland duly voted in the minority against the commitment of the Poor Bill on 28 March 1765; ibid., f.129. Grafton MSS. Acct.423/56 (1775).

63. Jones and Holmes (eds.) Nicolson's London Diaries, p.612; Hayton and Jones (eds.) A Register of Parliamentary Lists 1660-1761, p.23, n.25.

64. Chatham Corr., iv, 334. The Earl of Guilford was the father of the Prime Minister, Lord North. Lord Boston (1761-75) was deputy Chairman of Committees (1773-4).

65. E.g., B.L.Add.MS.34419, f.307 (1783). Marlborough's proxy was cast in favour of the East India Bill in December 1783. See Debrett, Parl.Register (2nd.ser.), xiv, 108. Compare his reaction after the divisions. P.R.O. 30/29/1/15. f.775. For further examples of the consideration given by peers to the matter of granting or withholding their proxies, see B.L.Add.MSS.32978, f.31(1766), 32980, f.3(1767).

main concern in 1768, however, was to find a'standing proxy';[66] that is, a regular attender at the House who would demonstrate the Duke's continued support of the Opposition.[67] Many proxy-holders were so conscious of the trust placed in them that they sought the absentees' directions as to how they should vote on their behalf, especially on controversial issues,[68] and even abstained from casting their own votes at a division if uncertain whether their views were consistent with those of the peers whose proxies they would be obliged to cast.[69] There is also evidence that some peers felt obligated to send their absent colleagues an account of how they had exercised their proxy votes.[70] Peers, however, did have the right to refuse to hold a proxy; as, for example, did Lord Mansfield who 'would not trust himself with the vote of any lord but his own'.[71]

There were some restrictions to the use of proxies. In 1689 the use of proxies in judicial questions was limited to 'preliminaries to private causes ... but not in giving judgement';[72] and nine years later their use was discontinued altogether, even if the judicial

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66. Wentworth Woodhouse Muniments, R 1-1097.
67. Ibid., R 1-1096, 1097.
68. E.g., Olson, Radical Duke, p.134(1771). B.L.Add.MS.45030, ff.17, 20,21(1783). The Duke of Portland, the recipient of Hardwicke's proxy, voted in both divisions on the East India Bill. Hardwicke's proxy was cast in favour of the Bill on 15 December 1783, but not on the seventeenth. Debrett, Parl.Register (2nd.ser.), xiv, 108. Hardwicke did not attend the House of Lords in the meantime, but cancelled his proxy to Portland by letter, which was received by the clerks on 17 December. See H.L.R.O. Proxy Books, 1783-84.
69. E.g., B.L.Add.MS.35617, f.316(1781).
70. E.g., HA 13213 (Hastings MSS.), 19 February 1734.
71. B.L.Add.MS.35912, f.93 [11 March 1766].
72. Standing Order No.82 (11 June 1689).

proceedings were by legislation.[73] Proxies entered in the books after Prayers could not be used that day.[74] On the opening day of the session 11 November 1718, this rule was astutely applied for the Government's benefit. The King's Speech from the Throne referred to the peace treaties and alliances that had been concluded since Parliament last met, and copies of these were duly presented to the House after the Lord Chancellor's customary report of the Speech. In the debate that followed, it was proposed to omit words referring to British naval successes from the Address in Reply,[75] but the amendment was defeated by a Government majority of 59 votes to the Opposition's 45. A call for proxies revealed that, prior to the reading of prayers, Lord Chancellor Parker had entered the names of twenty-five proxies in the books.[76] Furthermore, the Lord Chancellor had prevented the tory peers from doing the same by 'going abruptly to Prayers at least an hour and a half before the usual time'.[77] As a protest against the Government's call for proxies, several Tory peers quit the debating chamber and refused to cast their proxy votes when their names were called over.[78]

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73. Ibid., No.83 (15 March 1698), e.g., Almon, Parl.Register, x, 403 (8 April 1778). For the background to the Order, see B.L.Add.MS. 35878, f.234.

74. Standing Order No.85 (16 January 1703). For the history of this Order, see H.L.R.O., Historical Collection 45, Bishop Nicolson Diaries, 16 January 1703.

75. L.J., xxi, 7-8.

76. H.M.C. Stuart Papers, vii, 593. In the division of 11 November 1718, 24 proxy votes were cast for the Government, Sainty and Dewar, Divisions. There was no rule to prevent proxy deeds being completed and dated by the absentees before the start of the session; e.g., HA 13212 (Hastings MSS.) 11 January 1732.

77. H.M.C. Stuart Papers, vii, 593.

78. Ibid. Hugh Thomas sent two reports of this debate to the Earl of Mar, but there are important discrepancies between them. The above account is based on the second of these, as it was reputed to be the work of Lord North and Grey, who had attended the day's proceedings; cf. ibid., pp.567-9 and pp.592-3.

Proxies were not permitted when the House sat in Committee.[79] No explanation for this rule has been found, but it may be that proxies were considered a superfluous and time-consuming practice in view of the fact that a Committee's decisions were provisional, subject to being confirmed by the whole House. This technicality could have an important political significance: on 20 February 1718, the opponents of the Mutiny Bill 'being apprehensive that the court party were stronger in voices and weaker in proxies',[80] endeavoured to do the greatest damage to the Bill before its Committee stage by proposing instructions to the Committee. They succeeded in protracting the debate for five hours, until 7 p.m., but eventually lost the two divisions, despite the Opposition's greater number of proxy votes.[81] In 1767, however, it was to the advantage of the opposition groups to Chatham's Ministry that proceedings on the American business be held in Committee, for the Administration held thirty proxies to the Opposition's ten.[82] It was for this reason that the Duke of Newcastle, having found it necessary to explain that proxies were not valid in Committee, earnestly urged the Bishop of Ely to attend the House on 26 May, having also extracted a promise to that purpose from the Bishop of Salisbury.[83] The close votes of 22 and 26 May on the proceedings of the Massachusetts Assembly, therefore, occurred in Committees of the Whole House.[84]

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79. May, Parliamentary Treatise, p.220; e.g. H.M.C. Stuart Papers, vi, 84 (1718).
80. Parl.Hist., vii, 539.
81. Ibid., cols.539-43. For the division figures, see Sainty and Dewar, Divisions.
82. Walpole, (Yale) Correspondence, xxii, 520.
83. B.L.Add.MS.32982, ff.119,124 (25 May 1767). Both were present on 26 May. L.J., xxxi, 616.
84. See also supra., pp.277-9.

The principle which lay at the heart of the custom of proxy votes, as understood in the eighteenth century, was expressed by Viscount Stormont on 4 March 1779:[85]

> it was the giving any lord in whose wisdom and integrity the absenting lord reposed an implicit confidence, a right to join the absent lord's vote to his own, upon every public occasion. It was a trust, and as long as it was faithfully discharged, like every other trust, both the person giving the power, and the person holding it, discharged their duty mutually.

Stormont made this statement in the same debate as the most outspoken opponent and critic of the practice, the Duke of Richmond, made one of his many attacks on the proxy procedure.[86] Richmond made out a proxy for the first time in March 1769 as he would be absent when the question of the payment of the King's debts was expected to come before the Lords.[87] His motive for issuing a proxy on that occasion was to publicly demonstrate his confidence in the Marquess of Rockingham as his representative and who, at the time, was the only person who knew of the Duke's great hatred of the practice.[88] Richmond's views on the subject did not change in subsequent years. In a private letter to Rockingham, 12 February 1771, he listed what he considered to be wrong with the procedure.[89]

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85. Almon, Parl.Register, xiv, 144.
86. Infra., p.441.
87. Olson, Radical Duke, p.130.
88. Ibid.
89. Ibid., p.134.

> I have in general great objections to giving and receiving [proxies]. They are a most useful engine to all administrations, but a very bad and dangerous one; that which may be clearly right in the judgement of those present by a great majority, may be over-ruled by the proxies of foreign ambassadors and Governors at Petersburg and at Virginia; and I think some day of making an attempt to abolish them, at least in part - that is, they shall not be given if out of the kingdom, nor without reasons signed by the giver of the proxy, and for one particular business.

Richmond's objections did not at first hinder him from casting a proxy vote, providing that he could do so consistently with his own opinions.[90] In later years, he was neither so reticent about making his views known in public, nor so willing to comply with the rules of the House of Lords. In the debate of 4 March 1779, following his own motion to adjourn for a week the inquiry into the management of Greenwich Hospital, Richmond called proxy votes an 'absurd' custom which frequently resulted in the votes of absentee peers being cast 'directly contrary to their sentiments'.[91] His comments were confirmed by Viscount Stormont and the Earl of Radnor, the first of whom reaffirmed the declaration he had made in a recent debate that, although he had been against the repeal of the Stamp Act in 1766, his proxy had been cast in its favour by the Duke of Grafton.[92] Radnor, too, dwelt on instances when the practice had been

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90. See ibid., and Walpole, Memoirs of George III, iv, 183-4.

91. Almon, Parl.Register, xiv, 144.

92. Ibid., pp.144-5. Grafton had been Northern Secretary at the time of the Rockingham Administration 1765-6.

'grossly abused'.[93] A year earlier, Richmond had already begun to contest the Lords' orders concerning the casting of proxy votes. On 8 April 1778, when his protest against the use of proxies in the division on the Foley Estate Bill because its judicial nature had been overruled, Richmond defiantly declared that he would not cast the vote of the Duke of Leinster, whose proxy he held.[94] Twelve peers present that day had 15 proxies to cast between them. Many had already left before the Foley Estate Bill was brought on in the House.[95] In the division, therefore, only five proxies were cast for the Bill, and three against. Among the latter, the Earl of Derby, who had supported Richmond in the debate, held one proxy, and the Marquess of Rockingham, if still present, had two. It is possible, therefore, that Richmond did not cast his proxy vote on this occasion.[96] Richmond again publicly refused to vote on behalf of the Duke of Leinster on 6 March 1780, upon the division to ascertain who advised the King to dismiss the Marquess of Carmarthen and the Earl of Pembroke from their county lieutenancies. He claimed that a peer had the right to exercise an option whether to cast a proxy vote or not, and this was apparently acceeded to by the House.[97]

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93. Ibid., p.145. Radnor drew particular attention to a point made by Richmond in his letter of February 1771 (supra.,p.441), namely, the use made by government of the proxy votes of its foreign ambassadors. Richmond was always quoting new examples of the abuse of proxy votes: on 13 May 1782, he fixed his eye on a peer who had 'produced the proxy of another Lord (De La Warr) who at the time of its production was actually dead'. Debrett, Parl.Register (2nd.ser.), viii,294.

94. Almon, Parl.Register, x, 403. Leinster, an Irish title, was known at Westminster as Viscount Leinster, that is, the British peerage created for his father in 1747.

95. Ibid.

96. L.J., xxxv, 426; H.L.R.O., Proxy Books, 1777-78.

97. Almon, Parl.Register, xv, 212. A total of 36 proxies were held on this occasion by 26 peers present; 34 of the proxies were cast in the division, 8 for the Opposition and 26 for the Government. L.J., xxxvi, 53-4; H.L.R.O., Proxy Books, 1779-80; Sainty and Dewar, Divisions.

Despite the faults and weaknesses of the convention, the weight of the evidence indicates that, for the most part, proxies were sought after by both sides in the House of Lords. In many cases, the giving and receiving of proxies were private arrangements between friends or close political associates;[98] but others were granted at the request of respected political leaders, and the choice of representatives left to them, as a mark of the absentees' confidence and trust.[99] As Richmond had implied in 1771,[100] the government of the day was usually far more successful in securing proxy votes than the opposition.[101] When the reform of the peerage was being discussed in 1719, the Earl of Murray was promised one of the twenty-five hereditary peerages with a seat in the Westminster House of Lords, on condition that he 'always give his proxy to our Secretaries of State'.[102]

Proxy votes were called for in divisions in the House of Lords on 158 occasions between August 1714 and March 1784.[103] In most cases they served to emphasise the majority by which a question had been decided or, in Horace Walpole's words after the North Government had overwhelmingly carried the Massachusetts Government Bill on 11 May 1774, 'to colour the violence with more name'.[104] At other times, an opposition peer

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98. E.g., Bedford Corr., i, 194(1746); B.L.Add.MS.32724, f.67(1751); Grenville Papers, ii, 244(1763); Chatham Corr., iv, 280(1773).

99. E.g., B.L.Add.MSS.32690, f.458(1737); 32966, f.232(1765); Newcastle (Clumber)MSS., Ne C 3901(1763); Portland Papers, PwF 2266 (1765), PwF 1519(1767); P.R.O. 30/8/20, f.179(1766); MSS.North, d.26, ff.56-7(1783). See also Wentworth Woodhouse Muniments, F 63-1-2 (1766).

100. Supra., p. 441.

101. E.g., MSS.North, d.26, f.24(1775). Lord James Beauclerk was the Bishop of Hereford.

102. H.M.C. Polwarth MSS., ii, 76.

103. Sainty and Dewar, Divisions.

104. Walpole, Last Journals, i, 345. The question to pass the Bill was approved by 69 votes to 20. This majority was extended by 23 proxies for the Contents but none for the opponents of the Bill. Sainty and Dewar, Divisions (11 May 1774). For another example, see MSS.North, d.25, f.48 [26 October 1775].

would call for a count of the proxy votes on the instructions and insistence of a lord whose proxy he held, so that his opinion on a subject might be made known despite his absence from Parliament.[105] This motive was reinforced by the custom that, unless proxies were called for, the names of the absentees could not be signed to the Protests which might be entered in the journals.[106]

Proxies could have a crucial effect on the decisions of the House by being a potential means of overturning the result of a vote of the lords present. This occurred ten times between 1714 and 1784. On five of these occasions, proxy votes sucessfully reversed what would otherwise have been government defeats,[107] while in another three instances proxies swung the vote in the opposition's favour.[108] In the most famous of these, that of the inquiry into the South Sea Company Accounts on 24 May 1733, the Government peers originally had a majority of 57 votes to 48, but the Opposition's greater number of proxies made the vote equal, at 75 each. In accordance with the practice of the House of Lords, therefore, the equal vote was declared in favour of the Not Contents, in this case the Opposition, and the witness was duly summoned.[109]

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105. E.g. HA 13211 (Hastings MSS.) (2 March 1731); Portland Papers, PwF 9016 a (3 March 1769).
106. Wentworth Woodhouse Muniments, R 1-968. For this practice, see infra., p.447.
107. These were: the Address on the condemned lords (22 February 1716 - there were two divisions which are here counted as one); Game Bill (13 February 1753); Braunston Common Bill (9 May 1775); Foley Estate Bill (8 April 1778); Election Bribery Bill (25 June 1783). For the division and proxy figures, see Sainty and Dewar, Divisions.
108. These were: Oxford's impeachment (27 June 1717); Ranelagh's Bill (4 February 1718); South Sea Company Accounts inquiry (24 May 1733). For the division and proxy figures, see Sainty and Dewar, Divisions. The other two instances were the Weaver Navigation Bill (10 May 1720) and the Simpson Enclosure Bill, 14 April 1763.
109. Supra., pp.377-9.

Although the evidence is scanty, there are clear indications that peers also practised a system of 'negative proxies',[110] that is, of pairing. This was the practice whereby peers of opposing views mutually agreed to be absent at a division:[111] Horace Walpole, for example, observed that at the division on the Royal Marriages Bill, 26 February 1772, 'the Dukes of Montagu and Northumberland...absented themselves, though the first a creature, the second an opponent of the Court'.[112] These arrangements appear to have been made on the peers' own initiative. The Earl of Cork apologised to the Duke of Portland for not obeying his summons for 3 June 1767, but he had 'agreed with Lord Castlehaven (who you may remember voted against us) not to attend upon condition he would not, and it was but yesterday that he again sent to me to try to know if I continued my resolution...however, I have the pleasure to think that my attendance cannot make the least difference in point of numbers'.[113] Peers paired off both for particular items of business and for longer periods of weeks or months. Lord Walpole wrote an urgent request to the Duke of Portland on 24 June 1767:[114]

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110. May, Parliamentary Treatise, p.221.

111. The first list of 'pairs' was published in 1811, by which date the practice appears to have become a formal arrangement between the government and opposition whips. Sainty and Dewar, Divisions, p.6.

112. Walpole, Last Journals, i, 31.

113. Portland Papers, PwF 1520. Cork's letter was written on 15 June 1767. Both he and Castlehaven (Barons Boyle and Audley, respectively, in the British peerage) were present on 2 June and voted on opposing sides of the division on the Quebec Papers (B.L.Add. MS.33037, ff.73-4,77-8). True to their agreement, Cork stayed away from Parliament for the remainder of the session, whereas Castlehaven is entered in the Lords Journals as having attended the House on 3 and 17 June (L.J., xxxi, 629,636,638 cf. PwF 1521), the latter date being the occasion of the first division on the East India Dividend Bill in which, however, he did not vote. (For the division list, see B.L.Add.MS.33037, ff.111-112,115-116).

114. Portland Papers, PwF 8924.

> [I] beg you to use your utmost endeavours to get somebody off with me for the remainder of the session; this I must beg you would take all possible pains to accomplish for me, as it will render my return unnecessary, and I am too anxious both in the East India and Linen Bills not to give you all the support in my power; and therefore, will undoubtedly return if I cannot by this method make this matter easy and convenient.

It was a peculiarity of the House of Lords that peers did not necessarily have to leave the debating chamber if they wished to abstain on a particular question. Two options lay before them: either they could withdraw to the woolsacks [115] which, technically, were not considered to be within the House and so peers would not be counted in the division, [116] or they could withdraw behind the throne. [117] The other alternative, of course, was to leave the House between the end of the debate and the division, which was the way usually chosen by individuals or opposition groups wishing to publicly demonstrate their refusal to vote. [118] The Duke of York, despite receiving a written request from his brother the King to support the Government, chose to speak for the minority in the debate of 22 May 1767 on the Massachusetts Indemnity Act, but left the House before the vote, rather than take his defiance to the extreme. [119] When the subject of the Massachusetts riots first came before the House on 10 April 1767, the Duke of Newcastle entirely

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115. May, Parliamentary Treatise, p.213. The examples quoted below, however, refer to peers withdrawing behind the woolsacks.

116. E.g., MSS. North, d.25, f.48,[26 October 1775], ff.66-7 (15 November 1775).

117. E.g., H.M.C. Carlisle MSS., p.153(1735), 162(1737); Grenville Papers, iv, 404 (1768); Almon, Parl.Register, ii, 166(1775).

118. E.g., H.M.C. Stuart Papers, vi, 83(1718); Walpole, Memoirs of George III, ii, 81(1765), iv, 100(1770).

119. Grenville Papers, iv, 224.

approved of the Duke of Bedford's motion for an Address to request the King to take the Indemnity Act into consideration. The Marquess of Rockingham and some of his supporters, however, were intent on voting with the Government against the motion, so that Newcastle, unable to bring himself to vote with them or against them, 'went openly away' before the conclusion of the debate.[120]

One convention usually observed in the Lords was that a peer would desist from voting in a case or motion in which he was directly involved, although there was nothing to prevent him from doing so if he insisted. On 6 March 1780, following the debate on the motion for an Address concerning their recent dismissal as Lord Lieutenants, Lord Osborne and the Earl of Pembroke refrained from voting in the division, 'thinking ourselves too personally interested to judge on that occasion'.[121]

Members of the House of Lords also had the right to express their disagreement with decisions of the House by means of Protests, and to have these written records of their dissent entered in the journals without requiring the consent of the House.[122] Peers could, if they wished, enter more than one Protest on a matter.[123] A Protest was entered under the heading 'Dissentient' and usually, though not necessarily, followed by the reasons for the Protest together with the signature of the dissenting peer or peers.[124] The original

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120. B.L.Add.MS.32981, f.125. See also Burke Corr., i, 306-7 n.4.

121. Leeds Memoranda, p.27.

122. Standing Order No.87 (5 March 1642).

123. Wentworth Woodhouse Muniments, R 1-1621 (1775).

124. Standing Order No.87 (amendment of 22 June 1715); e.g. (with reasons) L.J., xx, 331(1716); xxvi, 575-6(1746); xxxiv, 205(1774). cf. (without reasons) xxii, 505(1725); xxviii, 167(1753); xxxiv, 407(1775). cf. (e.g. of both), xxxvi, 30-2(1780). As these examples show, Protests could be entered when no divisions had taken place.

Standing Order of 1642 stipulated that if Protests were to be valid, they had to be entered in the journals on the next sitting day of the House.[125] This Order was replaced in March 1722 when the Lords' resolution of 22 February, limiting the time for entering Protests until two o'clock the next sitting day and requiring that they be signed before the House rose, was made a new Standing Order.[126] The revision met with considerable opposition,[127] and a Protest was recorded against it which voiced its opponents' fears that the new rule would limit in future the use made of the privilege and perhaps cause its abandonment altogether.[128] Such apprehension proved to be unfounded, for the right to protest was used as frequently after 1722 as before. Nevertheless, an incident in February 1726 may well have caused alarm. On 18 February, the Opposition peers were denied time to enter their Protest against an Address to the King because the House rose before two.[129] Leave was granted on that occasion to extend the time limit,[130] but although the point of principle was established, no Protest was subsequently entered in the journals.[131] A similar problem arose at the commencement of the 1775 session of Parliament. On 27 October, the Opposition peers failed to complete their Protest against the Lords' Address in Reply, passed the previous day, in order to register it in the journals before two in the afternoon; moreover, the House adjourned shortly after one. In his

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125. Standing Order No.87.
126. Standing Order No.114 (3 March 1722); L.J., xxi, 700,709.
127. Parl.Hist., vii, 974.
128. L.J., xxi, 709.
129. Ibid., xxii, 596-8,599.
130. Ibid., p.601. See also supra., p.345.
131. For a conflicting account of this incident, see H.M.C. Portland MSS., vii, 426.

correspondence with Lord Camden, the Marquess of Rockingham suggested moving the House on Monday 30 October for leave to enter the Protest, so that even if this was refused, another Protest could be entered against the denial of the first.[132] Camden, an ex-Lord Chancellor, made his opinion quite clear.[133]

> I do not understand the Order as giving time till two o'clock for entering the Protest whether the House be sitting or not, but declaring only that it be the latest period even though the House should sit later ...If the way to get at this liberty is clumsy and perhaps against the true sense of the Order, and if being overruled by a majority (which will certainly be the case) we thrust in the Protest by another irregularity, that of tacking it to a Protest against the denial, your Lordship will be pleased to consider what comments will be made upon this conduct. It is not reputable for any party, especially that of opposition, to be wrong either in the matter or the manner of their proceedings, nor in my judgement very politic just at this time to call off the discourse and the attention of the public from the great business of America, to a wrangle upon the meaning of an Order of the House of Lords and the irregular method of recalling an opportunity which we by our own negligence have suffered to pass by.

Rockingham had his wish, for the Journals simply show the Protest as having been entered in the usual manner on 26 October.[134] A far more practical, though technically unprincipled, approach was to draft

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132. Wentworth Woodhouse Muniments, R 1-1615.

133. Ibid., R 1-1616 a.

134. L.J., xxxiv, 490-2,495.

the Protest prior to a debate and before the House had taken any decision or action, so that the protesters would not be embarrassed by a time limit.[135] Another method adopted by the Rockinghams was to initiate proceedings on a Friday so that, following their probable defeat, the Opposition leaders might have a whole weekend to prepare a Protest.[136]

Only peers present or represented by proxy on the day of the relevant decision could subscribe their names to a Protest.[137] During the course of the eighteenth century, greater political use was increasingly made of this privilege of the lords. The almost moribund custom was revived by the opponents of Walpole's Government in the 1720s when it also became the practice to print the documents.[138] In the 1770s, the Rockinghams exploited its potential to new extremes, embodying in their Protests the basis of the Opposition's ideology.[139] Hence, the peers who signed the Protests became identified with those views, while their publication and circulation was also a means of bringing to public notice the names of new recruits to the Opposition ranks.

Contemporaries held conflicting views about this convention. To the Duke of Richmond in 1770, Protests were a means of declaring 'to the people that the body of peers was ready to countenance and support all legal exertions of the people's rights',[140] but others

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135. E.g., ibid., R 1-1559 (1775).

136. E.g., Chatham Corr., iii, 409.

137. Portland Papers, PwF 9002(1768) and Olson, Radical Duke, p.148 (1771).

138. Plumb, Sir Robert Walpole, i, 370; Hervey, Memoirs of George II, i, 311(1734).

139. For a discussion on the use of Protests, see W.C.Lowe, 'The House of Lords, Party and Public Opinion : Opposition use of the Protest, 1760-82' in Albion, xi , (Summer 1979), pp.143-56., e.g. Rockingham Memoirs, ii, 240-1(1774).

140. Wentworth Woodhouse Muniments, R 1-1414 (8 October 1770).

were of the opinion voiced by Sir William Trumbull as early as 1712 when he dubbed Protests as 'a tedious, redundant piece of false eloquence'.[141] Lord Camden tried to give Lord Rockingham a genuine piece of advice in October 1775 when he advised against the use of long and frequent Protests, 'for they are serious things, and should not be subscribed without due consideration. Protesting in my opinion will become a very feeble purpose and lose its edge if too often used'[142] Two months later, the Morning Star and Daily Advertiser published the same opinion: 'Protests...on the journals of the House of Peers, were formerly so rare, that they never appeared without threatening in earnest the head of some tyrant or his creature, but nowadays they are as common, and held as cheap as incendiary letters, which are always harmless as to consequence'.[143]

The usual tendency of the Protests to criticise government and the majority came under assault itself from the pen of Lord Hervey.[144]

> This privilege of protesting with reasons is one which the lords seem proud and fond of, but of all the Parliamentary privileges, forms, customs, or institutions, it seems to me the most unaccountable and absurd, as it must always carry along with it a censure on the conduct of the majority of the House, and is generally nothing more than an authorised libel on the people then in power: by which means, if Protests have any effect on posterity, they must have a bad one, supposing it to be of any consequence what future times think of the

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141. Trumbull Add.MS.136/3, R.Bridges to Sir William Trumbull, 20 June 1712.
142. Wentworth Woodhouse Muniments, R 1-1616a (28 October 1775).
143. Morning Star and Daily Advertiser, 21 December 1775.
144. Hervey, Memoirs of George II, i, 244-5.

> equity or wisdom of the former; for as they always urge the strongest reasons against what is done, without ever being compared with those on the other side, they must make every one in futurity who is unacquainted with the motives of the legislature for the laws they enacted, imagine they either did not understand the interests of the country, or, from some mean corrupt views, sacrificed it to their own.

Generally, contemporaries were more concerned about the present and were eager to stress that the Protests provided a very one-sided view of opinion within the House,[145] being invariably that of the minority. Should the majority, however, strongly object to the reasons given in the Protests, they could have them expunged from the journals,[146] which meant that the majority's opinions would always be upheld.

Divisions were public affairs in the sense that they forced the silent majority of the debates to declare their opinion. It was not unknown for a division to be held on a bill when there had been no debate, but on which some peers chose to give a 'silent negative'.[147] This factor could be used by the opposing sides in Parliament at different times to further their own aims. The opposition, for example, might force a division, although having no hope of winning, in order that new recruits to their ranks might publicly demonstrate their

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145. E.g., N.L.W. MS.1352, f.123(1743).

146. E.g., L.J., xix, 461(1712); xxi, 652,686-7,691,695,696,697-8, 705,709-10,710,713(1722). No other instances occurred between 1714 and 1784. See also Hervey, Memoirs of George II, i, 244.

147. London Evening Post, 15 April 1775.

allegiance.[148] Moreover, even if the division and question were lost, the minority would have a reason to enter a Protest,[149] while the practice of publishing division lists of the minority[150] and their Protests was a propaganda exercise to win support among the public. This appears to be the reasoning behind the Duke of Richmond's letter of 26 April 1772 to the Marquess of Rockingham seeking his support for the Protestant Dissenters Relief Bill. He claimed that the dissenters and the Whigs had much in common :[151]

> ...their religious principles and our political ones are so very similar and most probably will make us generally act together ... I wish, therefore, you would ... write to as many lords as you possibly can to attend for I understand the scheme of the Ministry is to throw it out in the House of Lords by the bishops. Now the more of your friends appear in the list of the minority the better.

Richmond, moreover, was generally in favour of dividing the House more often than was customary, so as to give discontented peers an opportunity to show how they felt and forcing hitherto uncommitted peers to declare themselves on the issue.[152]

Divisions on certain issues could also be used to embarrass supporters of the government : the Earl of Strafford observed that on

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148. E.g., N.L.W. MS.1352, ff.25-6(1739); H.M.C. Rutland MSS., iii, 23(1779).

149. E.g., B.L.Add.MS.32982, f.391(1767).

150. E.g., Parl.Hist., ix, 106 (3 May 1733); Timberland, History, v, 97 (12 May 1736); Torbuck, Debates, xx, 251-3 (first motion on 13 February 1741); Debrett, Debates, iv, 374 (11 March 1766); Almon, Parl.Register, ii, 151-2 (17 May 1775); Debrett, Parl.Register (2nd.ser.), xiv, 107-8 (15 December 1783).

151. Olson, Radical Duke, pp.151-2. A division on the motion to commit the Bill was held on 19 May 1772, when the Opposition formed a minority of 23 and 4 proxies to the Government's 73 plus 29 proxies.

152. Wentworth Woodhouse Muniments, R 1-1129 (1768).

the question to commit the Pension Bill on 2 March 1731, many regular court adherents divided with the minority, 'being unwilling to vote against their honour and conscience, and yet afraid of losing their places or pensions'.[153] However, government too could play that game. A division on the second reading of the Regency Bill on 30 April 1765 recorded 120 Contents and only 9 Not Contents. Horace Walpole explained why the minority's total was so low, and why the collective voice procedure had not sufficed in view of the Government's clear overwhelming majority.[154]

> Between six and seven the House divided, 120 for the Bill and only 9 against it; Newcastle and his whole party retiring, either from shame of contradicting their former conduct, or not being determined to give openly the offence which they had sounded so high in private ... Thus Lord Temple, with his small faction, and one or two of Mr.Pitt's friends, was deserted, after the most sanguine expectations of a vigorous opposition .... Lord Lyttelton, more temperate than his cousin Temple, had withdrawn with Newcastle and the others to avoid voting, the Chancellor[155] having forced a division by declaring the Not Contents had it.

Furthermore, a division was an excellent opportunity for publicly demonstrating that a government no longer had the complete confidence of the Crown. When the Lord Chancellor, the Duke of York, several of Lord Bute's friends and court peers voted in the majority against the Rockingham Ministry on 4 and 6 February 1766, it was said that 'many beg[a]n to prophesy a change of administration'.[156] Similarly,

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153. H A 13211 (Hastings MSS.) 4 March 1731.
154. Walpole, Memoirs of George III, ii, 81-2.
155. Lord Chancellor Northington.
156. Caldwell Papers, ii(2), 69; also pp.70-71.

Lord North was not slow to see the writing on the wall when household officers of George III's court voted against Fox's India Bill on 15 December 1783.[157]

The main purpose of holding divisions was to assess the strength of opposing sides in the House. The decision to divide, therefore, was seldom a spontaneous event in response to a need to clarify the collective voice vote, but rather a pre-resolved matter on the part of the opposition leaders.[158] Such decisions were not to be taken lightly, as they might have the unrewarding result of only 'showing the thinness of their party'.[159] However, an astute choice of subject and manner of proceeding and a supreme effort in canvassing opposition members to be present, could lead to close and threatening divisions for a government.[160] In most cases, the opposition peers realised that they had little hope of success against a government's steady majorities, and preferred therefore not to divide the House on major items of business. Nevertheless, they were not blind to an opportunity to score a win over administration. On 15 November 1775, the Opposition chose to endure the rejection of four of the five resolutions proposed by the Duke of Grafton concerning the army in America without once challenging the decisions in favour of the Government.[161] But later in the day, when a great many peers had left the House, they called for a surprise division on the question to give a first reading to the Malt Bill that had just been delivered

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157. B.L.Add.MS.33100, ff.471-2.

158. H.M.C. Stuart Papers, v, 84.

159. Stanhope of Chevening MSS., U 1590 / C 474, f.24(1707).

160. For example, the votes against the Chatham Administration in May and June 1767. Burke Corr., i, 313; Chatham Corr., iii, 255,260; Franklin Papers, xiv, 168 (the Duke of York left before the division).

161. L.J., xxxiv, 508-9.

from the Commons. Unfortunately for the Opposition, they had lost as many supporters as Government, and it led to another disappointing result of only 7 votes against the Government's 33.[162] The Opposition fared much better, using the same tactics,on 8 April 1778. The motion for an Address concerning the situation in North America was defeated by a Government majority of 66 votes to 33. However, shortly afterwards, the Opposition succeeded in threatening the Foley Estate Bill : a motion to refer the Bill to the judges led to another division in which both sides had 24 votes, with the Government only staving off what would have been a surprise defeat by calling for proxies.[163]

Usually, it was the opposition who suffered most from long debates and frequent divisions : their followers had far more reason to tire of politics and leave out of despair.[164] Several divisions on one or more items of business on the same day were unusual, but not exceptional. They occurred either on measures which coincided with others of great political interest,[165] or on those which faced sustained opposition to their proposals.[166] This approach was impractical in opposing legislation; hence, divisions were only

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162. MSS.North d.25, f.63.

163. Sainty and Dewar, Divisions, See also supra., p.444 and n.107.

164. E.g., B.L.Add.MS.32966, f.300(1765). See also supra., pp.274-81.

165. E.g., 28 January 1741: that the appointment of receivers of petitions be omitted from the journals (C 45, NC 55); that an Address be presented concerning Vernon's representations (C 44, NC 71); that a Secret Committee be appointed to consider the conduct of the war (C 43, NC 68). 17 June 1767: Public Highways Bill, to read a third time (C 37, NC 11); East India Dividend Bill, that a conference with the Commons be desired (C 52+ 5=57, NC 73 + 25 = 98).

166. 22 February 1716 (Address on the condemned lords). 27 January 1730 (resolutions concerning the Treaty of Seville). 11,17,18 and 16 May 1774 (Series of divisions against the Coercion Acts).

forced at one or two stages considered tactically suitable. In the House of Lords, the major hurdle was the committal stage: between 1714 and 1784, twenty-six bills were defeated in seventy-five divisions at this point. However, even having successfully passed the Committee bills could not be considered safe for as many as fifty-nine divisions were held on the final motion to pass, though only six failed. During the first twenty years of George III's reign, the House of Lords voted on seventy-nine items of legislation,[167] in a period when 3896 new acts were passed.[168]

Incidence of Divisions on Bills in the House of Lords 1714-1784

Stage	Pass	Fail
To bring in a bill	0	3
First Reading	3	1
Second Reading	10	8
Motion to commit	49	26
To resume House	11	0
To receive report	3	1
Third Reading	13	2
To pass	53	6

167. A total of 125 divisions. This does not include divisions in Select Committees.

168. H.L.R.O., Parliament Office Papers 354, Precedents Book, pp.92-93.

The highest number of known divisions in a session in the House of Lords was 36 during the 1721-22 session of Parliament.[169] This total went unchallenged until 1778-79 session, when there occurred 35 divisions in all. These figures were far higher than the average, which was approximately eleven per session for the whole period. From 1743 to 1760, the average was only three divisions per session; there were five sessions of Parliament between 1714 and 1784, when no divisions at all took place.[170] In the first three Parliaments of George III's reign, 261 divisions were held in the House of Lords, but the twenty-year period of Walpole's Government saw 300 divisions in the Upper House. The highest division figure of the whole period was the 176 votes cast on 11 March 1766 on the motion to commit the Stamp Act Repeal Bill. This, however, included 42 proxies. The highest division decided by the votes of the peers present only occurred on 27 June 1717, when 151 peers divided on a motion concerning the Earl of Oxford's impeachment.

Divisions were a relatively rare occurrence in the House of Lords. Many items of business could be decided on non-party lines. Other factors contributing to the low number of divisions were the reluctance of the opposition to display their weakness, and the inconvenience caused to members by dividing the House. Furthermore, there was the peers' fundamental lack of interest, which either meant that no one would call for a division,[171] or that individual peers

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169. These totals include divisions in the House itself and in Committees of the Whole House.

170. These were the sessions of 1721, 1744-5, 1754, 1760-1, 1768.

171. Fitzmaurice, Shelburne, i, 68.

might miss a vote,[172] particularly if it were held during the evening dinner-hour. In a letter dated 5 June 1767, the Earl of Sandwich reassured the Duke of Newcastle that Viscount Dudley's absence 'at our last question', probably the division on the Quebec papers on 2 June, was a mere accident. He explained:[173]

> his Lordship is a thorough lover of his country, but he loves a good dinner almost as well, and always eats a whole hare to his own share when he is so fortunate as to get one. This inclination carried him away to dinner, and he thought to be time enough to serve his country afterwards; but unfortunately the division was just over as he got again to the House.

Contemporaries were also forced to admit that issues of national importance had little effect on voting in the Lords, in contrast with the Commons.[174] Most debates, therefore, even lengthy ones, ended without a division in the House.[175] However, whatever the means of arriving at a decision in the House of Lords, it was incumbent on every peer to acknowledge the finality of its decisions once affirmed from the woolsack, as expressed by Lord Mansfield: 'for the honour of the House, and the quiet of the public ... even the lords who differed in opinion were bound, from that moment, to bury and forget their opinions in favour of the general authority'.[176]

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172. E.g., MSS.North, d.25, f.48(1775); P.R.O. 30/8/61, f.105; also see L.J., xxxiii, 172-3(1771).
173. B.L.Add.MS.32982, f.256(1767).
174. Rockingham Memoirs, ii, 92(1769).
175. E.g., Boston Port Bill, second reading 28 March 1774. Burke Corr., ii, 528,529.
176. Almon, Parl.Register, ii, 162 (19 May 1775).

XIV

COMMITTEES OF THE HOUSE

Committees were a feature of proceedings in the House of Lords since the Middle Ages.[1] By the eighteenth century, their principal use was as a part of the legislative procedure, public bills being referred to Committees of the Whole House and private bills to Select Committees.[2] Occasionally, the Committee procedure would also be used as the instrument for detailed inquiry by the House.[3] The Lords' terminology for these bodies was varied and somewhat misleading. Committees of the Whole House were also known as 'Grand Committees';[4] Select Committees were originally called Committees 'out of the House' and later 'outdoor Committees',[5] probably because, unlike Committees of the Whole House, they met elsewhere than on the floor of the debating chamber.[6] By 1700, these names were obsolete, and where a Committee of the Whole House was not employed , bills and other matters were simply committed to a body distinguished by no name other than a Lords Committee.[7] Hence, the terms 'select' or, alternatively, 'private' Committee were rarely used during the eighteenth century except for the odd occasion when it was found necessary to transfer the consideration of legislation from a Committee of the Whole House

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1. Bond, Guide to the Records, p.41.
2. See supra., pp.91,103.
3. Standing Order No.28 (1621); infra., p.461.
4. E.g., Parl.Hist., vii, 60.
5. Bond, Guide to the Records, p.41.
6. See infra., pp.462,463,471.
7. E.g., L.J., xxiii, 102(1727); xxxi, 87(1765); xxxvii, 44(1784).

to one 'out of the House'.[8]

Select Committees of the House of Lords during the eighteenth century were principally used for considering private legislation,[9] but they were also the main Parliamentary instrument for investigating procedural, administrative, and various other domestic problems: to review the Roll of Standing Orders, as in 1715 and again in 1762;[10] to search for precedents as to the mode of proceeding against offenders,[11] or regarding the use of circular letters for summoning the attendance of the Lords;[12] to consider papers concerning the breach in the banks of the River Thames;[13] to consider printing the Rolls of Parliament and the descents of the peerage.[14] They could also be used to consider issues of more general importance, such as that on colonial trade in March 1734,[15] the dearness of provisions, January 1765,[16] and the London riots of May 1765 following the rejection of the Silks and Velvets Duties Bill.[17] The function of a Select Committee was to examine witnesses and papers,[18] and to report to the House on the evidence, proposing resolutions and

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8. E.g., ibid., xx, 621,632(1718); xxi, 107(1719), 242(1720), 319 (1720); xxxv, 224(1777).
9. For an example of Committee procedure, see H.L.R.O., Committee Minute Books, H.L., viii, 4 February 1718.
10. L.J., xx, 35; xxx, 168.
11. E.g., ibid., xx, 199(1715).
12. E.g., ibid., xxiii, 617(1731).
13. Ibid., xx, 425(1717).
14. Ibid., xxxi, 509,531(1767).
15. Ibid., xxiv, 391-2.
16. Ibid., xxxi, 18.
17. Ibid., pp.200,207,209.
18. E.g., H.L.R.O., Committee Minute Books, H.L., xvi, 17 and 20, May 1765. For the procedure of summoning witnesses, see supra, p. 40.

giving its opinion if empowered to do so.[19] Committee reports were intended as the basis for legislative or other action. A Select Committee's inquiry would be limited to the specific matter referred to it, but this could be extended at any time by further orders of the House : the Lords' Committee responsible for revising the Standing Orders of the House of Lords in 1715 was established on 1 April, but it was not given the authority to propose new orders until 10 May.[20]

The early Select or outdoor Committees of the House of Lords met in the ante-rooms surrounding the debating chamber or the offices of the Great Officers of State.[21] Their meetings were held during adjournments of the House, and their appointment involved a deliberate selection of the membership, a feature that would entitle them to be called Select Committees even in the modern sense of the term. On 21 May 1679, the Committee for Privileges reported its findings as to the 'ancient way of naming Committees...of particular lords' as follows:[22]

> That they find the proportions of Committees very different in number; but, in regard that the earls' bench and barons' bench are much increased and are near equal in number, but the bishops bench continuing the same, they are humbly of opinion that there be two of each of the other benches named for every one that is named of the bishops' bench; and, for regular naming thereof, that the Committee of the earls' bench be first named, then the bishops, then the barons, according to the numbers that shall be agreed for every bench, and that no lord be named of a Committee but by some lord standing up uncovered.

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19. E.g., L.J., xxxi, 35,213-4(1765); xxi, 19(1718).
20. Ibid., xx, 35,48.
21. E.g., ibid., xiii, 92(1677), 149(1678); ii, 630(1610); iii, 450(1625), 733-4(1628).
22. Ibid., xiii, 582.

By the eighteenth century, however, although the meeting place of Select Committees had on the whole been limited to the Prince's Chamber,[23] their composition was no longer a rational or deliberate choice but was decided simply by nominating all the peers present in the House at the time of a Committee's appointment,[24] with the usual exception of the Lord Chancellor. Attendance at the sittings of a Lords' Committee was in fact open to all peers of the House, and they also had the right to speak on the issue; but precedence had to be given to the peers 'though of lower degree' who had been appointed members of the Committee, and they alone had the right to vote.[25] No presence lists were kept of the peers who attended Committee meetings; hence, the only peer named regularly in the minutes was the Chairman, while all references to other peers present were incidental.[26] The membership of a Lords' Committee could be augmented at any time by subsequent orders of the House. These orders varied in form: the House could authorise 'all the lords that come to [a] Committee to have voices',[27] thus giving all peers who attended the right to vote. Alternatively, poor attendances at private Committees could be overcome by supplementing

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23. See infra., n.29.

24. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.8; Harrowby MSS., document 35(q), 19 [20] November [1754]; e.g., L.J., xx, 425(1717); xxix, 35(1757); xxxiv, 72(1774). Although the House had abandoned the nomination procedure in practice, the clerks continued to record the names of the Committee members in the order prescribed by the formula of 1679.

25. Standing Order No.33 (1624).

26. E.g., H.L.R.O., Committee Minute Books, H.L., xvi, 17,20,21,22 May 1765.

27. L.J., xxi, 224(1720). 'Voices' referred to the collective voice method of voting, cf. xxiv, 368 (1734).

the original membership with the peers present in the House on a later day.[28]

The quorum for Select Committees of the House of Lords was five, and their meetings were held on weekday mornings during the session, usually at 10 a.m.,[29] an hour before the House officially sat for business.[30] The day for the first sitting of a private Committee was to be nominated by the lord responsible for the motion.[31] Every Committee had authority to adjourn as it pleased.[32] There was but one constant exception to this convention, namely, the Lords' Committee appointed to draft an Address of Thanks in Reply to the King's Speech, for which the House always adjourned until the Committee was ready to make its report.[33] The conduct of proceedings in Select Committees was explicitly laid down in a Standing Order of the House. A peer who spoke in Committee was to do so uncovered, but could remain seated if he so wished. Judges and counsel who were appointed to attend were never to have their heads covered, nor were they to sit unless special permission was granted to the infirm.[34] If unanimity on a decision eluded the peers present in a Select Committee, the issue could be settled either by a collective

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28. E.g., ibid., xx, 589(1718); xxxiii, 624(1773).
29. E.g., ibid., xx, 178(1715); xxviii, 465-6(1740); xxxi, 261(1766); xxxvi, 685(1783).
30. See supra., p.342.
31. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.8; Harrowby,MSS., document 35(q), 19 [20] November [1754].
32. See supra., n.29.
33. E.g., L.J., xx, 7(1714), 271(1716); xxvi, 529(1745); xxviii, 5 (1753); xxxvi, 182(1780).
34. Standing Order No.32 (1621).

voice vote, or by a division.[35]

The general reluctance of peers to attend regularly at the House made the open nature of the membership of the Lords' Committees a necessity in order to ensure that some peers would present themselves to deal with business. A Committee composed in such a manner, however, was unsuitable to be trusted with matters of great importance. Thus, what can justifiably be called the only truly 'select' Committee of the Lords between 1714 and 1784 was the Committee of nine chosen by ballot to consider the papers presented at a conference by the House of Commons relating to the Jacobite conspiracy of 1722. On 16 March 1723, the peers, while seated in their places, cast their ballots into two glasses presented to each in turn by the clerks.[36] The containers were then placed on the Table and a Lords' Committee was appointed to count the ballot. The House adjourned while the Committee, or its quorum of three, met; and on being resumed, the Chairman reported the names of the nine peers who had been elected by the majority vote.[37] No further use was made of the balloting procedure in choosing a Committee of the Upper House until 1794.[38] Matters of a delicate nature or of great public importance could be referred to Secret Committees of the Lords. Such a proposal was made

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35. See Infra., pp.479-80.

36. The Journal account of a ballot in the Lords on 17 March 1704 described the clerks commencing the vote with the peers nearest the Bar of the House. L.J., xvii, 484.

37. This account is based on L.J., xxii, 119. See also Parl.Hist., viii, 203-4; Torbuck, Debates, viii, 312. For an indication of how rarely the House of Lords resorted to this procedure, see the list of Select Committees elected by ballot among H.L.R.O., Parliament Office Papers 58/26, Miscellaneous Papers.

38. See infra., p.468. L.J., xl, 189-98,198,199.

during the debate of 28 January 1741 on a motion to address the Crown for the letters of Admiral Vernon requesting more ships and men.[39] Lord Gower moved to 'appoint a Secret Committee of such members of the House as are of the Privy Council, with directions to report nothing which ought to be concealed',[40] the purpose of the Committee being to examine the Government's conduct of the war against Spain.[41] Lord Chancellor Hardwicke strongly resisted the motion.[42]

> There are great objections against Lord Gower's motion. No instance of any such thing without a complaint first made. What have the Ministry done to deserve it. You have not yet appointed a day to take into consideration the papers you have already. The war has subsisted a year and a quarter. A great fleet has been sent out agreeable to the advice of Parliament. It is impossible to say anything has failed. Secret Committees are appointed only on occasion of charges and accusations.

The motion was defeated by 68 votes to 43,[43] and no other instance has been found of a Select Committee of Secrecy being proposed or held during the period 1714-84.

Another variant of the Select Committee which fell into disuse during the eighteenth century was that of Joint Committees of the two Houses of Parliament. The last Committee of its kind had sat in 1695.[44]

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39. L.J., xxv, 577.
40. B.L.Add.MS.6043, f.58.
41. L.J., xxv, 578.
42. B.L.Add.MS.6043, f.58.
43. Ibid.
44. B.L.Harley MSS.6837, ff.108-15. Joint Committees were revived in 1864. Bond, Guide to the Records, p.57.

Joint Committees had certain advantages: they avoided double inquiries; no confusion need arise from conflicting examination of evidence and witnesses; and, moreover, they enabled the Commons to share the Lords' privilege and advantage of hearing evidence taken on oath. The membership of a Joint Committee was composed as for a conference between the two Houses,[45] the representation of the Commons being double that of the Lords, though the latter alone had the right to name the time and place of the meeting.[46] The Commons members of a Joint Committee were in no subordinate position as was the case in conferences. During the Committee meetings the lords of the Joint Committee sat in order of precedence, but the M.Ps. too had the right to sit (unlike at conferences), though in no particular order,[47] and all remained with their heads covered.[48] The Chairman of the Committee would be the senior peer present.[49]

Between 1714 and 1784, two motions were made in the Lords for appointing Joint Committees with the House of Commons. One was on 2 June 1733 when Sir Robert Walpole's opponents moved 'for appointing a Joint Committee of further inquiry into the South Sea Company's affairs, composed of twelve Lords,and twenty-four Commoners, to be chosen by ballot and to sit during the recess of Parliament'.[50] The other occasion was on 8 February 1780 when Lord Shelburne moved

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45. See infra., p.532.
46. Hatsell, Precedents, iii, 38.
47. B.L. Harley MSS., 6837, f.108.
48. Hatsell, Precedents, iii, 39.
49. B.L. Harley MSS., 6837, f.108.
50. Walpole, Memoirs of George II, i, 243; L.J., xxiv, 294. For the debate, see Torbuck, Debates, xi, 228-37.

for a Joint Committee to inquire into public expenditure.[51] Both motions were defeated. Apart from the political reasons for opposing these motions, the Lords generally, as the influence of their House waned during the period, grew increasingly averse to a proceeding in which they would be outnumbered two to one. It was such opinions as this, voiced by Government peers in 1788, that put paid to the preparations for a Joint Committee to examine the doctors who had attended George III during his illness.[52] In 1794, however, all objections were overcome by each House appointing a Secret Committee of its own to consider the 'seditious and traitorous conspiracy' involving the affairs of the London Corresponding Society and the Society of Constitutional Information, and authorising the Committees to communicate with each other so that, in effect, they co-operated as a Joint Committee.

The Select Committees of the Lords, as well as the Committees of the Whole House, were all ad hoc appointments, apart from two sessional Committees which were to be named at the opening of every session.[53] The Committee for Privileges was to meet in the House

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51. Walpole, Last Journals, ii, 270; L.J., xxxvi, 30; Leeds Memoranda, p.23. In a division, the motion was defeated by 101 votes to 55, including proxies. Sainty and Dewar, Divisions.

52. Hatsell, Precedents, iii, 41.

53. Standing Order No.8 (1621,1626,1710 - revised in 1715). In the seventeenth century there had been a second Sessional Committee of the House of Lords, namely, the Committee for Petitions. First appointed in 1621, the Committee dealt with petitions requesting original hearings before the Lords as well as appeals against the lower courts. No evidence has been found of its appointment from November 1693 onwards, probably falling into abeyance after the House of Lords surrendered its right to exercise original jurisdiction. The Receivers and Triers of Petitions, who had dealt with petitions in the Middle Ages, continued to be appointed every new Parliament until 1886, though they no longer performed any duties. Bond, Guide to the Records, pp.106-7,172.

of Peers at ten o'clock on Monday mornings.[54] Technically, however, it was not a Committee of the Whole House, despite the fact that its membership not only included the peers present on the day of its appointment[55] but also all peers who attended its meetings,[56] so that in practice its membership was unlimited. Its resemblance to a Committee of the Whole House was acknowledged in March 1771 when the House adjourned during pleasure and was 'put into'[57] a Committee for Privileges on the Anglesea peerage, this phraseology being usually reserved for a Committee of the Whole House. The quorum for Committees for Privileges stood at seven; but twice during the reign of George III it was reduced to five, the first occasion being at the commencement of the new session on 17 December 1765,[58] and the second upon referring to the Committee for Privileges the reasons delivered by the House of Commons at a conference on 12 December 1768 following the dispute over the Lower House's request that certain peers attend as witnesses.[59]

The official title of the Committee for Privileges was 'Lords Committees appointed to consider of the Orders and Customs of the House, and the privileges of Parliament, and of the peers of Great Britain and Lords of Parliament'.[60] This serves as an exact

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54. E.g., L.J., xxi, 371(1720); xxxii, 397(1770). For examples of the Committee adjourning so that the House could meet, see H.L.R.O., Committee for Privileges Minute Book, H.L., v, 28,38 (1762).
55. E.g., H.L.R.O. Manuscript Minute Books, H.L., li, 21 March 1715.
56. This was made a Standing Order (No.121) on 29 February 1732.
57. L.J., xxxiii, 93,96.
58. Ibid., xxxi, 229.
59. Ibid., xxxii, 200.
60. Ibid., xxiii, 7(1727); xxxii, 6(1767); xxxv, 9(1776).

description of those matters referred to the Committee, which included claims to vote in the election of the Scottish representative peers,[61] cases of breach of privilege of the House[62] and of its members,[63] and proceedings in peerage claims. This last category constituted a large and important part of the business of the Committee.[64]

The Committee for Privileges had a sub-Committee, also appointed at the start of each session, its specific orders being 'to peruse and perfect the journals of this and the last Parliament'.[65] The Journals Committee was authorised to meet when, where, and as often as it pleased,[66] which, by virtue of a Standing Order of 1685, also meant after the close of each session.[67] Three members sufficed to form a quorum for this body. Little is known of its proceedings, but it was this Committee that was entrusted with the work of printing the journals of the Lords following the resolution of the Upper House to this effect on 9 March 1767.[68]

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61. E.g., ibid., xxx, 86-7(1761).
62. E.g., the complaint of a Master in Chancery against arrest for debt, January 1742. H.L.R.O. Committee for Privileges Minute Books, H.L., v, 1.
63. E.g., the Earl of Warrington's complaint (May 1732) against the Court of Chancery for having denied him the privilege of giving evidence upon his honour, as was a peer's right; ibid., iv, 33-35.
64. See supra., p.126. The H.L.R.O. Committee for Privileges Minute Books, which are a record of the Committee's proceedings since 1660, usually give the name of the Chairman, the orders and papers read by the Committee, summaries of counsel's speeches, evidence, judges' opinions, the text of motions (though not the debates) and the order to report to the House.
65. L.J., xxvi, 10(1741).
66. E.g., ibid., xxi, 9(1718); xxxvi, 577(1782).
67. Standing Order No.91 (9 November 1685).
68. L.J., xxxi, 509.

A Committee of the Whole House simply meant the House sitting as a Committee. The main sphere of a Committee's work was as part of the legislative process. Every bill had a Committee stage, and that on a public bill was usually a Committee of the Whole House.[69] 'Grand Committees' were also established as a means of inquiry when the House wanted greater freedom to debate without the constraints of a rigid procedure. Such inquiries were ordered on the Oxford riots of 1717,[70] on the state of the peerage in March 1719 prior to introducing the controversial Peerage Bill of that year,[71] on the American colonies, January 1766,[72] and on the failure of the army at Yorktown in 1781.[73] During the period 1714 to 1784 the Lords also ordered on three distinct occasions that the State of the Nation be considered by a Committee of the Whole House. This differed from the usual Committee of inquiry only in that its deliberations were not confined to any particular subject;[74] nevertheless, that of January 1742 arose from the War of Austrian Succession,[75] that of January 1770 arose from the Middlesex election case,[76] and that of February 1778 from the American war.[77]

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69. See supra., p.91.
70. L.J., xx, 431,432,436-7.
71. Ibid., xxi, 83,84,86,87-8.
72. Ibid., xxxi, 228,235-9,246,250,252,254,258.
73. Ibid., xxxvi, 383,389,390-2,401,402,403-4,404,408(1782).
74. See supra., p.48.
75. L.J., xxvi, 37,40,41,44,48,51,53,58,60,62.
76. Ibid., xxxii, 407,410,417.
77. Ibid.,xxxv, 258,287,294-5,299,303,310,316,333,365,423,428.

A motion for considering the State of the Nation was usually an opposition tactic for censuring government policy as having caused great discontent or national disaster.[78] Debates on the State of the Nation were held on eleven occasions between 1714 and 1784, the Lords preferring, on eight of these, to consider the issues in full House. The peers could then, however, cause an issue raised during the deliberations to be considered in detail by a Committee; one such appointment was the 'Grand Committee' on the state of the public credit, 10 January 1721.[79]

A Committee of the Whole House did not possess the authority of a fully constituted House. It could only debate the issue referred to it;[80] petitions could not be received in Committee,[81] and all witnesses had first to be summoned and sworn before the whole House;[82] in conjunction with this, a Committee had no inherent right to send for more documents or call further witnesses, but had to report its requests to the House, which then issued orders accordingly.[83] A Committee was

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78. E.g., the debate on the State of the Nation concerning the Spanish War was proposed on 31 May 1739 by Lord Carteret, a leader of the anti-Walpole faction (Timberland, History, vi, 230). The motion on 27 November 1767 was made by Lord Weymouth, a leading Bedfordite (Wentworth Woodhouse Muniments, R 1-883; L.J., xxxii, 10). The order was postponed on 3 December (ibid., p.14) during the Bedfords negotiations to join the Chatham Ministry. The Duke of Richmond was the instigator of the inquiry in 1778 (Almon, Parl.Register, x, 56,160).

79. L.J., xxii, 376,381,389

80. May, Parliamentary Treatise, p.225.

81. Parl.Hist., vii, 433.

82. May, Parliamentary Treatise, p.243; e.g., L.J., xxxv, 727,760(1779). This rule applied to all Committees of the House of Lords, e.g. H.L.R.O. Committee for Privileges Minute Books H.L., v, 3(1747). However, there is also evidence to suggest that the Lords did not always adhere to these rules, and that the examination of witnesses could continue although they had not been sworn, e.g. ibid., xvi (20 May 1765).

83. E.g., L.J., xxxv, 295(1778).

not empowered to adjourn its own sittings or to adjourn a debate to another day; if business remained unconcluded, the Committee was to report its progress to the House, which then ordered that the Committee be reconvened on a future day.[84]

A Committee of the Whole House could only meet when the House itself was in session. Since the early seventeenth century, it was a Standing Order of the Lords that, should a peer desire that the House be put into Committee, his request ought not to be refused.[85] The procedure for convening a 'Grand Committee'was as follows:[86]

> The Order of the Day being read for the House to be put into a Committee...the Lord Chancellor adjourns the House during pleasure, and calls upon the lord by name who is Chairman,[87] who takes his place at the Table, sitting with his hat on.

Hence, the responsibility for chairing Committees of the House of Lords, whether public or private, lay not with the Lord Chancellor or Lord Keeper as Speaker,[88] but with a peer appointed by the rest of the House. The Chair in Select Committees of the Lords was originally taken by 'his lordship [who] was the first of the Committees'.[89] By the eighteenth century, this deference to seniority had long since

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84. E.g., ibid., xx,57(1715); 362(1716); xxxi, 250(1765).
85. Standing Order No.30 (9 May 1626); e.g., L.J., xxxi, 618(1767).
86. H.L.R.O. Historical Collections No.248, Notebook of the First Lord Scarsdale.
87. E.g., Torbuck, Debates, viii, 1(1721); Debrett, Parl.Register (2nd.ser.), iv, 321(1781); Morning Chronicle, 7 May 1782.
88. Standing Order No.28 (1621). The Lord Chancellor would then sit in his place at the top of the dukes' bench. See supra., p.290.
89. L.J., ii, 385(1606).

been abandoned and peers were, theoretically, free to choose their own Chairman. On 2 February 1778, after the question that the House be put into Committee was agreed to and ordered, but before the Lords could actually go into a Committee on the State of the Nation,[90] the Duke of Richmond (who had moved for the Committee)[91] nominated his fellow Opposition colleague, the Duke of Portland, to take the Chair against the Administration's candidate, Lord Scarsdale. Richmond supported the case of his nominee on the grounds that the initiator of a Committee was customarily 'complimented with the nomination of the Chairman';[92] a claim which Lord Dudley denied, this being the procedure in the House of Commons but not in the Lords, where 'the Chairman in Committees of the Whole House, if present, is looked upon in the light of perpetual Chairman'.[93] This supported the Earl of Sandwich's earlier statement that 'it was a rule of that House for one person always to take the Chair on such occasions...he had, for a great many years, sat in that House, that he remembered when Lord De La Warr[94] was the constant Chairman of the Committees, and he never knew an instance of their Lordships appointing a new Chairman when the old one was present'.[95] For the Opposition, the Duke of Grafton argued that, strictly speaking, each peer in turn ought to perform the duty of Chairman; but no one refuted Earl Gower's assertion that 'the usage of the House was in favour of the noble Lord [Scarsdale], who always presided

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90. Ibid., xxxv, 287.
91. See supra., n.78.
92. Almon, Parl.Register, x, 160.
93. Ibid., p.162.
94. See infra., pp.476,477.
95. Almon, Parl.Register, x, 161.

in Committees of the Whole House'.[96] In a division, Scarsdale was duly elected.[97] By 1778, therefore, it appears to have been the well-established practice that there should be one peer who, if present, would preside whenever the House sat as a Committee. Nevertheless, the incident of 1778 also implies that a question on the choice of Chairman would be put on each occasion that the House went into Committee. In normal circumstances, however, this was a mere formality, and probably explains why the Journals never record the appointment of a Chairman.

The question as to who should chair Committees of the House of Lords was not officially regulated until the resolutions of July 1800, which appointed the peer nominated at the beginning of every session as the Chairman of both Committees of the Whole House and of Select Committees.[98] The Lords' journals give no description of the method of appointment prior to that date; but a comparison of the printed Journals with the Manuscript Minutes and the Manuscript Committee Minute Books identifies the peer who reported from a Committee as having been the Chairman of that body. From this evidence there emerges, from 1714 onwards, a succession of lords who executed the role of Chairman in public and private Committees of the House more frequently than any others. Allowing that they themselves were overshadowed in occasional sessions[99] due to their infrequent attendance or total absence from the House, the lords who may be acknowledged

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96. Ibid.
97. 33 votes for Portland, 58 for Scarsdale. For the debate, see ibid., pp.159-162.
98. L.J., xlii, 636.
99. E.g., Lord Botetourt during the 1766-67 session, and Lord Boston between 1772 and 1773. Sainty, Chairman of Committees, pp.27,28.

as acting Chairmen of Committees were the Earl of Clarendon 1715-23, Lord De La Warr 1724-33, the Earl of Warwick 1734-59, Lord Willoughby of Parham 1759-64, Lord Delamer 1765-69, Viscount Wentworth 1770-73, and Lord Scarsdale 1775-89.[100]

The role of Chairman, if fulfilled effectively, would contribute greatly to the efficient conduct of business in the Lords, but this demanded of the occupant his regular attendance at the House and a willingness to apply himself industriously to the routine drudgery of chairing Committees and other related administrative functions, such as consulting the parties concerned with an item of business so as to decide on a date for the sitting of the Committee that would be convenient for all.[101] The nature of the work undoubtedly contributed to the unpopularity of the office, and may account for its slow development in the House of Lords. The 'severe'[102] attendance that would be expected of the Chairman, and a feeling of incompetence and unfamiliarity with the forms of the House, were more than sufficient to dissuade most peers from showing any interest in the post; but for others the financial allowance that might accompany the office

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100. For a full discussion on the development of the office, see ibid.

101. E.g., Portland Papers, PwF 8196. The Select Committee on the Portland Estate Bill was appointed on 16 April 1771, to meet on 1 May. L.J., xxxiii, 162-3. Portland's correspondent was the second Lord Sandys who succeeded to the title on his father's death on 21 April 1770, and was introduced in the House on 4 May 1770 (ibid., xxxii, 568).

102. P.R.O. 30/29/1/14, f.695 (1774). See also Portland Papers, PwF 8197 (1766). The first Lord Sandys was never the official Chairman of Committees, but was a most assiduous Chairman of Select Committees between 1744 and 1770. His absence from the list of Chairmen for the session 1756-7 (Sainty, Chairman of Committees, p.25) is accounted for by the fact that he had been commissioned as Speaker of the House of Lords. See infra., Appendix IV.

made it an attractive proposition.[103]

The first incumbents of the office were impecunious lords who looked to the Crown to support their dignities. The Earl of Clarendon received a pension of £2000 per annum from the Irish establishment from 1713 onwards;[104] Lord De La Warr was a Lord of the Bedchamber 1725-7 and Treasurer of the Household 1731-7.[105] The Earl of Warwick received a civil list pension of £800 a year and a private allowance of £500 annually from the secret service money ever since succeeding to his title in 1721.[106] Lord Willoughby of Parham depended on a £200 annuity received from the paymaster of pensions since 1718, a £400 secret service allowance which he received every year since 1754 and possibly earlier, and a further pension of £500 per annum granted when he became Chairman of Committees and which he retained until his death in 1765.[107] Lord Delamer's secret service allowance was raised from £700 to £1200 a year during 1765 after becoming Chairman.[108] Viscount Wentworth was a peer of more independent means than his predecessors, and nothing is known of what remuneration, if any, that he received during his tenure of the Chairmanship. However, his successor, Lord Scarsdale, was granted a sessional allowance of £1500 from the secret service money in recognition of his duties as Chairman of Committees in the House of Lords.[109] The availability of public

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103. B.L.Add.MS.35399, f.108(1759).
104. Calendar of Treasury Books, xxviii, 135,314; ibid., xxix, 585.
105. Complete Peerage, iv, 162.
106. Sainty, Chairman of Committees, p.4; B.L.Add.MS.32896, f.431.
107. Calendar of Treasury Books, xxxii, 550; Namier, Structure of Politics, pp.429,436,441,449,456,462,467,474,479; Sainty, Chairman of Committees, p.5.
108. Ibid.
109. B.L.Add.MS.37836, ff.68,80,114,138.

money for providing an allowance for the Chairmen of Committees infers that the responsibility for choosing a new Chairman when the post fell vacant lay with the government. This is substantiated by the evidence of the debate in 1778 when the Government strove to deflect the doubts about its candidate's claim to be the regular Chairman and, further, by the practice after 1800 when the motion for appointing a Chairman of Committees each session was made by the peer acting as Leader of the House. Furthermore, letters among the Hardwicke papers concerning the appointment of Lord Willoughby also indicate that the final decision in 1759 rested with the Duke of Newcastle, the First Lord of the Treasury.[110]

The rules of procedure in Committees of the Whole House were much the same as those for the House itself. The official seating arrangements of the House also applied in Committee, each peer being expected 'to sit in his due place'.[111] In debate, a peer addressed himself to their lordships,[112] and did so standing. The advantage of a Committee, however, was that every peer had a right 'to speak as often as he thought fit'[113], there being, therefore, 'more freedom of speech...that arguments may be used (pro & contra)'.[114] Greater freedom of debate was also ensured in that the procedural devices for obstructing motions were not applicable when the House was in Committee. Motions for the House to adjourn, for the Order of the Day and for the previous question,[115] therefore, could not be used. Hence, the

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110. B.L.Add.MS.35399, f.107; MS.35596, f.38.
111. Standing Order No.29 (9 May 1626).
112. May, Parliamentary Treatise, p.225.
113. Parl.Hist., vii, 541.
114. Standing Order No.28 (1621).
115. May, Parliamentary Treatise, p.225; for these motions, see supra., pp.371,375,376.

usual method in Committee for obstructing a decision on a question was to move the 'side question',[116] that 'the House be now resumed'.[117] This phraseology was replaced in the latter part of the period by the words that 'the Chairman do now leave the Chair'.[118] This motion took precedence over all others and brought the Committee to a premature end if passed. The use of this Parliamentary tactic was exemplified by the Committee proceedings on the State of the Nation on 11, 16 and 19 February, and 2 and 12 March 1778. On each occasion one resolution only was put to the Committee by the Opposition before a motion was made that the Chairman leave the Chair, which was carried by the Government's majority vote. In the resumed House, the Administration could then secure the rejection of all the Opposition's numerous resolutions by a tactical use of the previous question.[119]

At the close of the Committee's debate, the Chairman put the question in the manner normally followed by the Speaker, uncovering his head to do so.[120] It was his duty to decide the collective voice vote of the Committee. If his judgement was challenged, a division had to be held. The procedure in a Committee of the Whole House was officially the same as in the House proper,[121] but may have been conducted as in Select Committees of the House of Lords. On 19 March 1765, the Bishop of Norwich sent the following account of part

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116. Cowper Diary, p.52(1711).

117. H.L.R.O., Manuscript Minute Books, H.L., 21 February 1718; 11 May 1739; 26 May 1767. See also Standing Order No.31 (28 June 1715), and infra., p.480.

118. The first division to take place on a question so worded was on 2 March 1772. H.L.R.O. Manuscript Minute Books,H.L. For another example, see ibid., 27 February 1783.

119. Ibid., 11, 16, 19 February and 2,12 March 1778; L.J., xxxv, 303-4, 310-12,316-19,333-4,365-7.

120. H.L.R.O., Historical Collection 248, Notebook of the first Lord Scarsdale.

121. Ibid.

of the previous day's business in the Upper House: [122]

> In the Committee yesterday the Duke of Queensberry's and Lord Weymouth's Bill passed by a very great majority; by so great a one, that, though we did divide by going to the right and left of the Table, we did not stay the telling, the point being given up. It appeared very clearly to me that justice and number were on the same side.

No Committee of the Whole House was held on 18 March, but three bills were discussed by Select Committees of the Lords. [123] Another variation from the usual division procedure was that proxy votes were not allowed. [124]

The manner for reconvening the House from Committee was entered on the Roll of Standing Orders on 28 June 1715: it could only be done with 'the unanimous consent of the Committee, unless upon a question put by the lord who shall be in the Chair of such Committee'. [125] The motion that the Chairman leave the Chair was, therefore, another formality which was not recorded in the minutes. [126] The House being resumed, the Chairman made his report standing at the Table. [127]

A Committee of the Whole House made no report of evidence, only of resolutions which could be debated and then accepted or rejected by

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122. B.L.Add.MS.32966, f.71. This is the only example found; but consider also the manner of recording division figures in the minutes of Select Committees, e.g. H.L.R.O., Committee Minute Books, H.L., 22 May 1765.

123. Ibid., 18 March 1765.

124. See supra., p.439.

125. Standing Order No.31 (28 June 1715).

126. H.L.R.O., Historical Collection 248, Notebook of the first Lord Scarsdale. E.g. H.L.R.O. Manuscript Minute Books, H.L., lxiii, 7 March 1734 and cxi, 2 May 1765.

127. H.L.R.O., Historical Collection 248, Notebook of the first Lord Scarsdale.

the House. The provisional nature of a Committee's decisions was based on the principle expressed in the House in 1614 : 'that the House is not bound by any opinion or order taken by Committees, but free, and at liberty, to alter the same or vary from it, as their judgement shall lead them'.[128] Proceedings in Committee, therefore, were not held by contemporaries to be as important, nor their attendance there as vital, as in the normal proceedings of the House. The Bishop of Salisbury spoke for several absentees (while at the same time revealing a great ignorance of Committee procedure) when he wrote to the Duke of Newcastle concerning the American business on 26 May 1767, 'I hoped indeed that as nothing can be decisive in a Committee, I might have been excused without appearing in person, by means of my proxy'.[129] Moreover, proceedings in Committees of the Whole House were susceptible to be affected by party alignments. Select Committees, therefore, were the more effective instruments of inquiry, but the evolution of the true 'Select Committee' in the House of Lords was very much a development of the nineteenth century.

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128. L.J., ii, 707.

129. B.L.Add.MS.32982, f.124.

XV

THE SPEAKER OF THE HOUSE OF LORDS [1]

All deliberative assemblies require a presiding chairman; in the House of Lords this role is fulfilled, ex officio, by the chief legal officer of the realm, the Lord Chancellor.[2] His appointment was the prerogative of the Crown, as was the nomination of Speaker of the House of Lords.[3] An ancient Standing Order of the Peers' assembly, however, prescribed that the office be executed by the Lord Chancellor.[4] The Sovereign's authority to appoint a Speaker for the Upper House was to be seen during any temporary absence of the Lord Chancellor, or when the office was vacant.[5] If there was no suitable candidate for this high legal office, or none ready to take on the responsibility, the Great Seal would be placed in the joint custody of Lords Commissioners,[6] and a separate commission issued to appoint a Speaker for the House of Lords. This occurred four times between 1714 and 1784 : Sir Peter King

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1. The use of the term 'the Speaker' in this chapter refers to the Speaker of the House of Lords, and not, as is usually the case, to the Speaker of the House of Commons.
2. For the history of the development of the office of Lord Chancellor, see Campbell, Lord Chancellors, i, 1-28. Reference to the post is made in this chapter only when it is relevant to the Lord Chancellor's role as Speaker of the House of Lords.
3. Undated notebook of Sir Dudley Ryder, Harrowby MSS., document 35(q).
4. Standing Order No.1 (1621).
5. The first Vice-Chancellor was appointed in 1813. Sir F.D.MacKinnon, 'A writ of summons to Parliament', Law Quarterly Review, lxii (1946), 34.
6. The Act 1 William and Mary, c.21 enacted that the commissioners were to enjoy all the authority of a Lord Chancellor or Lord Keeper, and were to rank next after peers and the Speaker of the House of Commons. One of the commissioners was to be empowered to hear interlocutory motions, but the presence of two was necessary at the pronouncing of a decree or affixing the Great Seal to any instrument. Statutes of the Realm, vi, 86.

executed the duties of the office after the fall of Macclesfield in January 1725 until he himself was made Lord Chancellor in June;[7] Lord Sandys succeeded the Earl of Hardwicke as Speaker for seven months, November 1756 to June 1757;[8] Lord Mansfield presided for a twelve-month, January 1770-1771, after the sudden death of Charles Yorke who had been appointed Lord Chancellor Camden's successor,[9] and again from 8 April to 23 December 1783 after Lord Thurlow's dismissal in April.[10] The commission authorised Sir Peter King 'during our pleasure, to use, occupy, and supply, the room and place of our Lord Chancellor, or Lord Keeper of our Great Seal of Great Britain, in our Upper House of Parliament'.[11] Lords Sandys and Mansfield, however, as a recognition of their status in the peerage, were instructed to 'use, occupy, and enjoy' the office.[12]

The same procedure would be used by the King and his ministers to meet the need created by the temporary absence of the Lord Chancellor. The Chief Justice of the Court of Common Pleas, Sir Peter King, had had previous experience of acting as Speaker of the Lords, having been appointed to sit on the woolsack by commission on previous occasions during the Earl of Macclesfield's absences from Parliament.[13] The normal practice was to commission either of the Chief Justices of the Courts of Common Pleas or King's Bench, to 'use and supply' the powers of the office, the variation in phraseology

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7. L.J., xxii, 377-561.
8. Ibid., xxix, 4-189; Lyttelton Memoirs, ii, 544.
9. L.J., xxxii, 404 - xxxiii, 37,40.
10. Ibid., xxxvi, 639 - xxxvii, 30.
11. Ibid., xxii, 377.
12. Ibid., xxix, 4; xxxii, 404.
13. E.g., ibid., xxi, 153,155,157,159,215,217; H.L.R.O., Parliament Office Papers 354, Precedents Book, pp.13-14.

presumably being to mark the more temporary nature of the appointment. [14]

In February 1737, as the deterioration in Lord Talbot's health prevented him from attending the House of Lords, a commission of the latter kind was issued to enable Lord Hardwicke, Lord Chief Justice of the Court of King's Bench, to fill his place, which he did on 10 and 11 February. [15] On 16 February, another commission was read in the House empowering him to 'use, occupy, and supply' the office, Lord Chancellor Talbot having died on the fourteenth. Five days later, Hardwicke himself had been created Lord Chancellor. [16] On the evening of 18 March 1754 a commission was hurriedly issued to appoint Lord De La Warr as Speaker pro tempore, both Lord Chancellor Hardwicke and Sir William Lee, Chief Justice of the King's Bench, who 'had general commission' [17] to substitute for him as Speaker, being ill. De La Warr's tenure of the post lasted almost a fortnight, until Lord Hardwicke was sufficiently recovered to resume the woolsack on 1 April. [18]

Another who presided in a temporary capacity was Sir Dudley Ryder, Chief Justice of the Court of King's Bench 1754 to 1756, who kept an invaluable notebook on the forms and conventions to be followed by the Speaker of the House. He sat on the woolsack in place of Lord Hardwicke on 20 November 1754 and wrote a detailed description of the procedures for assuming the woolsack and the duties executed

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14. Sir Robert Raymond was so appointed in 1725 (L.J., xxii, 564) and in 1729 (ibid., xxiii, 319); Lord De La Warr in 1733 (ibid., xxiv, 237) and 1754 (ibid., xxviii, 249); Sir Dudley Ryder in 1754 (ibid., p.286); Sir John Eardley Wilmot in 1769 (ibid., xxxii, 272).
15. Ibid., xxv, 16-18.
16. Ibid, pp.18,23.
17. Harrowby M S S., document 21 (part III), 18 March 1754.
18. L.J., xxviii, 249-58.

that day.[19]

> 19 Nov[ember]. I first sat for the Chancellor. The following is what I did. The Serjeant at Arms of the Chancellor, Jepson, met me in the Chancellor's room. I then unrobed and put on my long (walking week) gown. I then sent for White the clerk to talk with him on forms. I then sent for Lord Will[oughb]y[20] and settled with him about what to do.
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> I went into the House untended by the Serjeant. Then Lord Will[oughb]y mentioned that the King had made me Speaker in [the] absence of the Chancellor, and my patent was read and left there. I then took my place on the woolsack, put on my hat, and several lords came to speak to me.

The entry continued with an account of the business transacted that day and gave the additional information of the names of movers of the motions.

The regular attendance of the Lord Chancellor at the House meant that the need to appoint a temporary substitute arose very infrequently. Nevertheless, the existence of a pre-commissioned relief Speaker of the Upper House meant that the lords had even less cause and opportunity of exercising the privilege, formulated as a Standing Order in June 1660, of choosing their own Speaker if none authorised by the King as such was present.[21] In the resolution of 1 August 1641, the Lords added to this claim the instruction that 'the Speaker is not

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19. Ryder gives the date as 19 November. Harrowby M SS., document 35(q); L.J., xxviii, 286-8.

20. Lord Willoughby of Parham, see supra, p.127. He played a prominent role in the Committee work of the House from 1739 till his death in 1765, and was probably consulted by Ryder, therefore, as an authority on the procedures of the House. Supra., pp.476,477.

21. Harrowby M S S., document 21 (part III B); Standing Order No.3 (9 June 1660).

to depart when the House sits without leave of the House'.[22] There are very few instances of the peers exercising their right; the Earl of Rochford was chosen Speaker pro tempore on 25 September 1770 in order to prorogue the Parliament.[23] On 7 June 1780, the Lord President, Earl Bathurst, after informing the House of Lord Mansfield's inability to attend that day due to illness, and none other having been appointed to take his place, was himself chosen by the four other peers present to act as Speaker for that day's sitting.[24] Technically, therefore, the situation need not arise whereby the House of Lords could not convene because of the absence of its official Speaker, as was the case in the House of Commons.[25] A temporary Speaker, however, whatever the mode of his appointment, had to surrender his place on the woolsack if the Lord Chancellor entered the debating chamber.[26]

The Speaker of the House of Lords, whether peer or commoner, took precedence over all other temporal peers, except the royal princes.[27] By the eighteenth century it was a well-established practice that a commoner entrusted with the custody of the Great Seal be given the title of Lord Keeper, the senior title of Lord Chancellor being reserved for a peer who performed the duty, but to

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22. H.L.R.O., Historical Collection No.59, John Relfe's Book of Orders, p.39. For the relevance of this instruction, see infra, p.487.

23. L.J., xxxii, 601. Also infra, p.504.

24. L.J., xxxvi, 145. Bathurst was an ex-Lord Chancellor and Speaker of the House of Lords. Mansfield was already deputising for Lord Thurlow since 28 April (ibid, p.110).

25. E.g., B.L.Add. MS.47584, f.16 (1763); but c.f. infra, pp.488-9.

26. May, Parliamentary Treatise, p.153; Campbell, Lord Chancellors, i, 16; Harrowby MSS., document 35(q), 30 January 1755.

27. The Harcourt Papers, ii, 35. See supra, p.290.

which the former could be elevated together with receiving a peerage as a mark of royal favour for service rendered.[28] Sir Peter King was so honoured in June 1725 after acting as Speaker since the fall of Lord Chancellor Macclesfield in January, and having presided at his trial.[29] Sir Robert Henley served King George II and the House of Lords as Lord Keeper and Speaker for three years before being raised to the peerage in 1760 as Lord Henley of Grainge, so as to be able to act as Lord High Steward at the trial of Earl Ferrers; but it was George III who made him Lord Chancellor in January 1761 and, three years later, created him Earl of Northington.[30]

The same Standing Order which reserved for the Lords the right to elect a Speaker of their own choice also stipulated 'That it is the duty of the Lord Chancellor or the Lord Keeper of the Great Seal of England ordinarily to attend the Lords' House of Parliament',[31] the reason being that the House could not sit without a Speaker.[32] When Parliament reconvened after the Christmas recess on 16 January 1733, Lord Chancellor King was absent, suffering from 'an epidemical distemper',[33] and his place was taken by Lord Raymond 'by virtue of a former commision',[34] issued to him as Chief Justice of the

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28. For the history of the office of Lord Keeper, see Campbell, Lord Chancellors, i, 19-20.
29. His commission to act as Speaker was read in the Lords on 11 January 1725 (L.J., xxii, 377). He was introducted as Lord King, Baron of Ockham on 31 May 1725, and created Lord Chancellor the next day (ibid., p.561).
30. Ibid., xxix, 189 (1757), 627-8 (1760), xxx, 33 (1761), 588 (1764). Supra, p.187, n.103.
31. Standing Order No.3 (9 June 1660).
32. Harrowby M S S., document 35(q).
33. B.L. Add. M S. 27732, ff.93-4.
34. L.J., xxiv, 164.

King's Bench in 1728.[35] After again serving as Speaker on 17 January, Lord Raymond declared the House adjourned for a week, as was also the House of Commons, their Speaker suffering from the same illness.[36]

On Saturday 3 February 1722 there was 'such a flame in the House of Lords that the like cannot be remembered; one would have thought that they would have unanimously agreed to have sent the Chancellor and all the Ministers to the Tower'.[37] The cause of the peers' discontent was the insult which it was felt had been committed against their dignity by the late arrival of Lord Chancellor Macclesfield, who had been delayed at St.James's Palace until almost three o'clock. In his absence, the Lords 'proceeded, according to the Standing Order of the House, towards choosing a Speaker; but, meeting with some difficulties as to the persons nominated, the Lord Chancellor came before any choice [was] made'.[38] Anthony Lowther, sending a report of the incident to his brother, Viscount Lonsdale, gave a more honest and explicit account of this part of the proceedings: 'the Chancellor not attending them till near four o'clock, before he came they named the Duke of Somerset for Speaker, but the moment he heard of it he ran out of the House; then they named Lord Lechmere, and he hid himself'.[39] Another account

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35. Ibid., xxiii, 319. Sir Robert Raymond was created Lord Raymond, Baron Raymond of Abbot's Langley,on 15 January 1731 and took his seat six days later (ibid., p.591). Raymond had previously been commissioned to act as Speaker at the prorogation on 1 July 1725 when Lord King failed to attend the first meeting of Parliament after his creation as Lord Chancellor (ibid., xxii, 564).
36. B.L. Add. MS.27732, ff.93-4; L.J., xxiv, 167; C.J., xxii, 6-7.
37. H.M.C., Lonsdale MSS., p.123.
38. L.J., xxi, 673.
39. H.M.C., Lonsdale MSS., p.123.

reveals that the Duke of Kingston, on hearing his nomination, reacted in the same way as Somerset.[40] A motion to adjourn so as to show the House's resentment at being kept waiting, which ought not to happen to 'the greatest council in the Kingdom, to which all other councils ought to give way'[41], was defeated by 49 votes to 31; but a Protest was entered in the journals.[42] The incident clearly shows that the House could not enter into the business of the day without the Speaker being present. It is little wonder that ministries, knowing of the extreme reluctance of members to assume the role of Speaker, even on the most temporary basis, made provision for similar unforeseen instances by appointing temporary Speakers by commission. The incident of 1722 took place because, the Chancellor's detention being unintentional, no summons had been sent to his deputy, Lord Chief Justice King.[43] Seventy years later, Lord Chancellor Thurlow's late arrival at the House on 21 February 1782 hindered the commencement of business and forced Lord Viscount Townshend to acknowledge that he would have to wait patiently for some time before having an opportunity to make his intended motion.[44]

The daily presence lists of the Lords Journals show that the rule demanding the constant attendance of the Speaker in the House

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40. Parl.Hist., vii, 960.
41. L.J., xxi, 673.
42. Ibid., Lord John Campbell suggests that there was such enmity between Lords Cowper and Macclesfield that the former took advantage of the incident to discredit his rival in the Upper House. Campbell, Lord Chancellors, iv, 399-400,532.
43. L.J., xxi, 672.
44. H.M.C. Lothian MSS., p.411.

was observed by the peers so appointed. Lord Cowper had a 100 percent attendance rate throughout the three Parliamentary sessions of his second period as Lord Chancellor, 1714-18; his successor, the Earl of Macclesfield, had a similar record for the sessions of 1718-19, 1720-21, 1721-22, and 1724, losing only four days in all during his seven years tenure of the office, 3 days out of 120 in the 1719-20 session, and one day from a possible 114 in that of 1722-23.[45] Lord Henley was present at all 63 sittings of the House during the first Parliamentary session of George III's reign (18 November 1760 to 19 March 1761). The most he lost was 23 days from January to May 1765. The short-lived Rockingham ministry survived only one Parliamentary session,in which Northington attended all but one of the 79 sittings of the House; yet having surrendered the Great Seal, his attendance next session was a mere 30 days out of 106. His successor, Lord Camden, was absent only once in the three sessions between 1766-9. Lord Mansfield, on average, was present for about half the total sittings of the Lords in any session; but during that of 1770 (19 January to 19 May) when he temporarily occupied the woolsack, he lost only two out of a possible 71 meetings, 10 and 15 January, that is, before he became Speaker of the House. Lord Apsley had a 100 percent record in two successive sessions, 1774-5.

The demands made on the incumbent's time and health by the dual role of Speaker of the Lords and judge were widely acknowledged by

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45. These figures do not include prorogations. cf. infra, n.99. A similar study of attendance during the period 1760-75 has been done by W.C.Lowe in his unpublished thesis 'Politics in the House of Lords, 1760-75', Appendix II, pp.945-53.

contemporaries.[46] The necessity of his presence in the House of Lords meant that Lord Chief Justice King had no time to sit in judgement on an estate bill which had been referred to him in 1724 as part of the legislative process.[47] A Lord Chancellor might have to burn the candle of his energy at both ends of the day; Chancery proceedings began early in the morning, around half-past seven o'clock,[48] while important debates in the Upper House continued until late in the evening. On 3 April 1740, Lord Chancellor Hardwicke took up his pen to write to the Duke of Newcastle at half-past ten at night :[49]

> Tho[ugh] I am much indisposed and fatigued as to be scarce able to hold up my head, yet I cannot excuse myself from making my apology to you,...It is a little hard to be suspected of a disinclination to meet one's friends when I firmly believe I have come to more nightly meetings than any man in the busy, laborious station in which I am placed, without any assistance, ever did. I was so right in my guess as to the late sitting of the House, that I assure you I did not get home till full half an hour after eight o'clock, and what time there would then have been for my attending your consultation, I leave to your own judgement.

Moreover, as a member of the government, the Lord Chancellor was also expected to attend Cabinet and Privy Council meetings. The Earl of Bath was so shocked to read in the newspapers that Sir Dudley Ryder had taken Hardwicke's place on the woolsack on 20 November 1754 that he wrote to warn the Earl : 'Your constitution was once a

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46. E.g., J.Duncombe (ed.) Letters by several eminent persons deceased, p.114.
47. Lambert, Bills and Acts, p.112.
48. B.L. Add. MS. 32692, f.204.
49. B.L. Add. MS. 32693, f.194.

very good one; but believe me, my Lord, it is the worst for your incessant labours'.[50] In a similar vein, the Earl of Denbigh wrote to Lord Northington on 2 August 1766 to congratulate him 'on being disburdened of the heavy weight of the Great Seal (which he always feared would be detrimental to his Lordship's health)'.[51] Earl Bathurst also was glad to retire from the arduous office in 1778; but he did not 'mean to be perfectly idle; I shall attend my duty in the House, and hope not to be perfectly useless'.[52]

In return for his labours a Lord Chancellor received a generous salary, but this represented only part of the fortune that could be amassed by the incumbent from the financial perquisites attached to the office, and as a result of the patronage and the bestowal of offices which lay in his power. On being appointed Lord Chancellor in 1718, Lord Parker received the £2000 'equipment' allowance that usually accompanied the Great Seal[53] and a salary of £4000 per annum.[54] In addition, he obtained £14,000 in cash from the King, and a sinecure post, a tellership of the Exchequer, for his son, worth £1500 a year.[55] Furthermore, Parker was also to receive an annual pension of £1200 during the King's lifetime.[56] Many years later, a warrant dated 8 April 1761 bestowed on Lord Henley a pension of £5,000 per annum, to be enjoyed by him during

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50. B.L. Add. MS.35593, f.62.
51. H.M.C., Denbigh MSS., p.295.
52. B.L. Add. MS.35614, ff.267-8.
53. Campbell, Lord Chancellors, iv, 522.
54. The basic salary could vary; for example, Parker's successor, Lord King, received £6000 p.a. (ibid., p.610).
55. L.J., xxii, 460.
56. Ibid.

his tenure of the Chancellorship.[57]

The Lord Chancellor's various roles and duties also brought him numerous rewards. At one time, every January the Lord Chancellor would receive a gift of £3000 from his fellow lawyers, but the practice was stopped by Lord Cowper when he first held the senior legal post from May 1707 to September 1710.[58] Various appointments in the administration of justice fell within the Lord Chancellor's sphere of patronage; he advised the Crown on the choice of puisne judges for the law courts in Westminster Hall; he appointed justices of the peace; and he possessed the right of appointment to the offices of Masters in Chancery. It was the abuse of this privilege that brought about the fall of Lord Chancellor Macclesfield in 1725.[59] The Lord Chancellor also benefitted financially from the fees imposed on the private legislation that passed through the House.[60] Hence, although Lord Mansfield repeatedly refused to surrender the secure post and good emoluments of Chief Justice of the Court of King's Bench (which was tenable for life) in favour of the political and thus insecure post of Lord Chancellor, he received no less a sum than £1,026 from fees while periodically serving in the temporary capacity of Speaker of the House of Lords.[61]

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57. B.L. Add. MS.36131, f.233.

58. Countess Cowper's Diary, p.63.

59. Campbell, Lord Chancellors, i, 18. For Macclesfield's trial, see supra, p.166. Lord Chancellor Cowper was also threatened with Parliamentary proceedings for his misdealing of the appointment and dismissal of magistrates, but the charge was eventually dropped. ibid., iv, 373-7.

60. Supra, Appendix II; Grosley, Tour, i, 64.

61. Heward, Lord Mansfield, p.91. This total was for the period prior to 1783.

One who failed to make the most of this income was Lord Chancellor Camden. When he surrendered the Great Seal in January 1770, the post was estimated to be worth £13000 a year.[62] Horace Walpole, however, wrote of him that 'He had saved little or no money, and had four or five children. All he had obtained was a flying pension of £1500 a year, till his son should attain a teller's place, of which he had the reversion'.[63] Although a grant of a retirement pension was usual for a Lord Chancellor, its bestowal was not to be taken for granted — as Lord Harcourt found upon his dismissal in 1714.[64]

The Lord Chancellor had two symbols of authority: the Mace, and the Lord Chancellor's purse, both of which would be carried before him in procession by the Serjeant at Arms and the purse-bearer, respectively.[65] The Mace was the Lord Chancellor's symbol of royal authority and, when placed beside him on the woolsack, it indicated that the House was sitting;[66] it was not to be removed till the House rose.[67] The purse supposedly contained the Great Seal of England, and this too would be placed before its custodian on the woolsack as the emblem of his authority. The Lord Chancellor himself only carried the purse when he received the messengers of the House of Commons at the Bar of the Upper House, or when in the

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62. Walpole, Memoirs of George III, iv, 30.
63. Ibid.
64. Harcourt Papers, ii, 56.
65. E.g., Supra, p.174.
66. E.g., L.J., xxii, 377, 564 (1725); xxii, 404 (1770).
67. No evidence has been found whether it was the practice of the Lords, as in the Commons, to place the Mace under the Table when the House went into Committee. Thomas, House of Commons, p.271.

presence of the sovereign.[68]

The sovereign's official visits to Parliament were usually limited to the opening of the Parliamentary session, to the giving of the Royal Assent to legislation, and to the prorogation of Parliament. Upon being notified that the King was approaching, the Speaker left the Lords' chamber and, carrying the purse, went to the 'great stairs, and receive[d] the King at the door'.[69] He then walked before the monarch into the robing room and stood close by while the King was robed. The procession entered the debating chamber, the Speaker again walking in front of his sovereign, and took his place behind the Prince of Wales's chair[70] on the right of the throne,[71] where he remained standing throughout the time the King was present in the House.[72] At the opening of a new Parliament, the King thereupon 'commanded the Gentleman Usher of the Black Rod to let the Commons know "It is His Majesty's Pleasure, that they attend him immediately, in this House" '.[73] The sovereign then addressed both Houses from the throne, or otherwise he further instructed the Speaker of the Lords to announce that the Speech from the Throne would be made on another named day, and to authorise

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68. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, pp.1,7.

69. Ibid., p.1. The door referred to was probably that at the foot of the great stairs, or royal stairs, leading from the Prince's Chamber to Old Palace Yard.

70. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.1. There was some uncertainty in Sir Dudley Ryder's mind as to whether this was due to his precedence as Lord Chancellor and not as Speaker. Harrowby MSS., document 35(q), 23 September 1755.

71. E.g., L.J., xx, 21 (1715); xxxvii, 3-4 (1783).

72. Harrowby MSS., document 35(q).

73. E.g., L.J., xxx, 107 (1761); xxxvi, 178 (1780).

the House of Commons to choose a Speaker for the Lower House.[74] Should the monarch, though present, be unable to address the House, as was the case at the commencement of the Hanoverian period because of George I's lack of knowledge of the English language, the annual Speech from the Throne would be read by the Speaker of the House of Lords. The Speaker would approach the throne and, upon kneeling, receive a copy of the Speech from the King, which he then read from his place behind the Prince of Wales's chair.[75]

The speech read, the sovereign then 'retired' and the Commons 'withdrew' to their own House.[76] The Speaker, thereupon, came from his appointed place and declared the Upper House adjourned during pleasure, in order to allow peers time to unrobe.[77] The Lords Journals make no record of this adjournment since the session which commenced on 21 January 1731,[78] but thereafter the House proceeded immediately to Prayers and thence to the formal business to be dealt with at the opening of a new Parliament or session. Other evidence, however, indicates that the Lords continued to

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74. Ibid., xx, 22,23-5 (1715); xxiv, 436-7, 439-40 (1735); xxxvi, 178, 181-2 (1780).

75. Ibid., xx, 23 (1715); xxi, 161 (1719); xxiii, 4 (January 1727). The Journals cease to note this variation at the accession of George II, ibid, xxiii, 144 (June 1727), p.450 (1730).

76. Ibid., xxviii, 283 (1754); xxix, 5 (1756); xxxii, 4 (1767), 394 (1770). Compare the wording in xxiv, 569 (1736).

77. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.1. The author adds that the 'late' Lord Chancellor always took advantage of the adjournment to accompany the King to his coach (ibid., pp.1-2). Croft was Clerk of the Journals 1772-97, and although the entries continue to 1847, this being an early entry the Lord Chancellor referred to can probably be safely identified as either Camden or Bathurst.

78. L.J., xxiii, 590-3. For earlier, see ibid., xx, 412-3 (1717), 554-5 (1717); xxi, 3-5 (1718), 369-70 (1720), 592-3 (1721); xxii, 233-4 (1724), 574-5 (1726).

adjourn after the King's departure, and when the Speaker returned to the woolsack he declared the House resumed, and sought their lordships' approval that prayers be said.[79]

Throughout most of the period of this study the regular pattern of practice was for prayers to be said at this point in the opening day of the session.[80] Between 1715 and 1722, however, the House of Lords always went to Prayers before the King attended.[81] For the remainder of the decade, the occasion for holding Prayers at the state opening of Parliament went through a transitional period; those on 9 January 1724, 20 January 1726, 21 January 1729 and 13 January 1730 following the earlier format,[82] while on 9 October 1722, 12 November 1724, 17 January 1727 and 23 January 1728 the Lords adopted the practice kept throughout the later part of the century.[83] Joseph Wight, a clerk of the House,[84] also dated the change in the practice to 1730 but could give no explanation for the alteration,[85] nor is there one to be found in the Journals.

Prayers being over, this was the appropriate time for peers waiting to take their seats, either by descent or creation, to do so.[86]

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79. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.2.

80. The one exception was when royal princes were introduced, Supra, p.288.

81. E.g., L.J. xx, 21(1715), 412(1717), 554-6(1717); xxi, 3-4(1718), 161-2(1719), 369(1720), 592(1721).

82. Ibid., xxii, 233,574; xxiii,297,449.

83. Ibid., xxii, 9, 343; xxiii, 5,163.

84. Joseph Wight held several of the clerks' posts in the House of Lords: Clerk (1716-24), Deputy Reading Clerk (1724-36), Copying Clerk (1735-53), Reading Clerk (1736-53), Clerk Assistant (1753-65). J.C.Sainty, The Parliament Office, p.25.

85. H.L.R.O., Historical Collection 251, Precedent Book, f.231.

86. Supra, p. 283.

This ceremony would be preceded at the opening of a new Parliament by the swearing of the oaths by the peers present, first by the Lord Chancellor, after whom the certificate of the election of the Scottish representative peers would be read, and then by all the peers in turn, and in strict order of precedence. When all the peers had resumed or taken their seats, a bill, pro forma, was to be read after which the Lords received a report of the King's Speech from the Lord Chancellor and ordered an Address of the House in reply.[87] Finally, the Committee for Privileges for the session would be appointed.[88] The last two stages need not occur in any particular order,[89] and the whole proceedings could be extended over several days.[90]

The Speaker of the House of Lords again acted in attendance on the sovereign when he visited the Upper Chamber of Parliament in order to give the Royal Assent.[91] This final stage of the legislative process often occurred on the final day of a session, so that the sovereign would also be present to signify his consent to the prorogation of Parliament. After the Royal Assent had been given, the King addressed both Houses in a speech reviewing the proceedings of the session. Then the Speaker of the Lords, receiving his directions from the Crown, prorogued Parliament to a specified

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87. Supra., p.66.
88. H.L.R.O.,Parliament Office Papers 74/1, John Croft's Precedent Book, pp.1-6. These proceedings were in observance of Standing Order No.8 (9 June 1660).
89. E.g., L.J., xx, 29-30(1715); xxiv, 441-4(1735); xxx, 113-6(1761); xxxvi, 183-4(1780).
90. E.g., ibid., xx, 21-30(1715); xxiv, 436-44(1735); xxx, 107-17 (1761); xxxvi, 178-85(1780).
91. Supra, pp.109-10.

date, in four to six weeks' time.[92] A prorogation, which suspended all business in Parliament, was never made effective for a longer period of time in case a crisis or a pressing item of business arose during a recess which demanded the consideration of Parliament; for, following a prorogation, Parliament could not reconvene before the appointed date unless by proclamation.[93] To extend the duration of the recess, Parliament could be further prorogued, a procedure which was usually carried out by commission.

The procedure to be followed on such occasions was described fully by Sir Dudley Ryder in his notebook on the practices of the House of Lords.[94]

> When the Parliament is prorogued by commission, it is granted to certain lords by name, of whom three make a quorum, which quorum sits on the form under the throne,[95] when one of them pronounces the words of the prorogation in the same manner as the King. And before that is done the Chancellor or Speaker says, "Is it your Lordships' pleasure to adjourn to robe? " Then they come in. Then the Lords' Commissioners come in and seat themselves. Then the Speaker goes behind the Prince's chair. Then messages go to the Commons, which is done I suppose without

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92. E.g., L.J., xx, 545-7(1717); xxviii, 153-6(1753); xxxvi, 361-2 (1781). In the debate on 11 November 1766, the Earl of Chatham, defending his Government's decision not to summon Parliament sooner despite the corn embargo crisis, stated 'that nothing could be so perilous as sudden and surreptitious conventions of Parliament : that it might well be considered as the law of usage and of Parliament, though not perhaps of the land, that no less than forty days' notice should be given'. Bedford Journal, i, 594.

93. Harrowby MSS., document 35(q), 30 January 1755.

94. Ibid., 19 November [1754].

95. Cf. L.J., xx, 552(1717) when six Lords Commissioners sat on the form provided for them, and xxvi, 400(1744) when there were four.

> Commissioners. Then the Commons come in, the Speaker [of the Commons] being at the Bar, the commission is read [by the clerk], and then the first Lord in the Commission pronounces the words of prorogation. The commission is to them or any three or more of them. The Chancellor or Speaker brings the commission I suppose with him.

Ryder was wrong in assuming that messages were sent to summon the Commons without any direction from the House of Lords, for it was the Commissioners' first act to command the Gentleman Usher of the Black Rod or his deputy to 'desire their [the Commons'] immediate attendance in this House, to hear the commission read'.[96]

This procedure was adhered to until the last decade of the first half of the century, for thereafter the prorogation was performed 'in a less ceremonious way'.[97] Sir Dudley Ryder described the new procedure as follows:[98]

> No prayers are read,[99] no adjournment for robing. The Speaker do[es]n't always go behind the Prince's chair, but stands where he pleases while the Commissioners are seated. And when the House is sitting, which cannot

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96. E.g., ibid., xx, 548(1717); xxi, 155(1719), 363(1720); xxx, 286(1762).
97. Harrowby MSS., document 35(9), 30 January 1755.
98. Ibid.
99. Prayers were first omitted from this procedure during Macclesfield's term as Speaker. At the prorogations of 1718, Lord Parker — as he then was — followed the official procedure, and prayers were read (L.J., xx, 665,667,669), and this same practice was observed in his absence in 1719,1720 and 1723 (e.g. ibid., xxi, 153,361; xxii,221). The short summer recess from 10 August to 19 October 1721 required no periodic meetings for the further prorogation of Parliament (ibid., xxi, 591,592), while in 1722 the Parliament was dissolved and the meeting of the new Parliament was repeatedly postponed by writ (ibid., xxii, 3-8. For this procedure, see infra p.506). However, Macclesfield was present at all the summer prorogations of 1724 (the last before his downfall) and on these occasions prayers were not read (L.J., xxii, 335-41). Sir Robert Raymond followed this new practice, in the absence of Lord Chancellor King, at the prorogations of 1725 (ibid., pp.564-72), and thereafter the convention was firmly established (e.g. ibid., p.693(1726); xxiv, 564(1735).)

> be without three Lords, the Speaker, only as soon as the House is ready, says,"My Lords, the commission has [been] issued under the Great Seal for proroguing the Parliament". [100] Then the commission is laid on the Table. Then the Lords Commissioners put on their robes and seat themselves and send for the Commons. And when they are at the Bar, the commission is read. And then the middle Lord in Commission sits and reads the words of prorogation of the Parliament, with his hat on.

The old form of proceeding was first abandoned by Lord Chancellor Hardwicke on 16 September 1742, and again on 19 October. [101] In his absence at the first four prorogations during the summer recess of 1743, the Lord Commissioners and Sir William Lee, Lord Chief Justice of the King's Bench and Speaker by commission to the House of Lords, adhered to the original usage [102] which Hardwicke ignored when he again sat as a Commissioner on 22 November 1743. [103] He further continued this innovation in procedure during the summer prorogations of 1744; [104] but the following year the Lords Commissioners, on 20 June and 22 August, and Hardwicke himself on 19 September 1745, returned to the former practice. [105] Hardwicke's constant use of the new form in 1746, 1748 and 1749 established it as regular Parliamentary procedure, and adopted in Hardwicke's absence in the prorogations of

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100. Compare the more formal wording of the Journals, e.g. ibid., xxiii, 710(1731); xxxvi, 363(1781).
101. Ibid., xxvi, 161,163.
102. Ibid., pp.259-265 (7 June, 14 July, 25 August, 13 October 1743).
103. Ibid., p.267.
104. Ibid., pp.400-4 (21 June, 2 August, 20 September 1744).
105. Ibid., pp.499-503.

summer 1750, and thereafter.[106]

Lord Hardwicke's influence in bringing about the change in procedure was made possible by the usual practice of appointing the Lord Chancellor as one of the Commissioners at a prorogation, on which occasions he acted as Speaker and Commissioner.[107] It was not customary, however, to appoint a Lord of the Regency (which the Lord Chancellor became by virtue of his office)[108] a Commissioner,[109] and under normal circumstances, therefore, a temporary Speaker would be appointed to preside in the House of Lords; but as he would not be a member of the Commission, his official place during the prorogation would be behind the Prince's chair.[110] In the King's absence, the commission for prorogation would be issued by the Lords Justices of the Regency, the Lord

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106. Ibid., p.637 (30 September 1746); xxvii, 245(13 October 1748) but not in his absence on 30 June and 30 August 1748 (ibid., pp.241,243); pp.369,371 (3 August and 14 September 1749); pp.464-70 (14 June, 30 August, 25 October, 22 November 1750), p.602 (13 August 1751); xxx, 7 (13 November 1760); xxxii,385 (14 June 1769). This too was the practice described in a precedent book of the Lords, another indication of its acceptance as standard procedure. H.L.R.O., Parliament Office Papers, John Croft's Precedent Book, pp.25-6.

107. Harrowby MSS., document 35(q), 30 January 1755. E.g., Lord King on 26 July 1733 (L.J., xxiv, 312); Lord Apsley on 23 July 1771 (ibid., xxxiii, 221).

108. Harcourt Papers, i, 53.

109. Harrowby MSS., document 35(q), 30 January 1755.

110. Supra, p.495,n.70. E.g. Sir Peter King, Chief Justice of the Court of Common Pleas, in place of Lord Chancellor Parker in 1719 (L.J., xxi, 153-9); Sir Robert Raymond of the King's Bench in place of Lord Chancellor King in 1725 (ibid., xxii, 564-72); Sir Dudley Ryder, Chief Justice of the King's Bench for the Earl of Hardwicke in 1755 (ibid., xxviii, 415-23). See also, infra., p.504.

Chancellor's signature frequently appearing on the document.[111] It required a special order from the Lords Justices, however, to enable the Lord Chancellor to also serve in his usual role of Speaker of the Lords and Commissioner at a prorogation; this occurred only during Lord Hardwicke's tenure of the office, on 13 October 1748, 28 September and 31 October 1752, due to the illness of his deputy Sir William Lee.[112] The sovereign's return to the realm terminated the Regency, and any subsequent prorogations would be authorised by him, at which the Lord Chancellor assumed his usual dual role.[113] The normal procedure, therefore, was to appoint peers who were Lords of the Privy Council to the Commission.[114]

The leading role in the prorogation procedure would be taken by the senior peer present, who occupied the middle position when the Lords Commissioners sat on the bench between the throne and and the woolsack, and flanked on either side by those next in precedence.[115] This primary position was usually taken by the

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111. E.g., Lord Parker 1720 (L.J., xxi, 361,365); Lord Hardwicke in 1740 (ibid., xxv, 527,529). But this was not necessarily so: Lord Parker did not sign the commission of 25 August 1720 (ibid., xxi, 363-4), nor did Lord King sign that of 22 June for the prorogation of 1 July 1725 (ibid., xxii, 564-5), or Lord Hardwicke that of 14 August 1740 for the prorogation five days later (ibid., xxv, 531-2).

112. Harrowby MSS., document 35(q), 30 January 1755. Sir William Lee, Chief Justice of the King's Bench, attended as Speaker at the preceding prorogations, 30 August 1748 and 4 June and 16 July 1752, ibid., xxvii, 243,245(1748), 709-15(1752).

113. E.g., 22 November 1743 (ibid., xxvi, 267-8); 19 September 1745 (ibid., pp.503-4); 22 November 1750 (ibid., xxvii, 470-1).

114. Harrowby MSS., document 35(q), 30 January 1755. See also the account of any prorogation in Lords Journals.

115. E.g., L.J., xxxi, 666 (31 August 1767 — the three Commissioners being Lord Chancellor Camden, the Archbishop of Canterbury, and Viscount Townshend).

Lord Chancellor, but the Standing Order demanding his constant attendance at the House could apparently be ignored with impunity at prorogations during recess. Lord Chancellor Thurlow, sure that Parliament could be prorogued in the absence of the Speaker, was not concerned about missing a meeting due to illness, being confident, 'in theory, that there can be no objection to it, [but] I have writ[ten] to London, to learn whether it be so understood there'.[116] The Earl of Rochford was chosen temporary Speaker by the House on 25 September 1770 for the sole 'purpose of proroguing the Parliament'.[117] He also acted as 'the middle Lord in Commission'[118] that day, the Speaker of the House, if a Lord Chancellor, or Lord Keeper, or a peer of the realm, taking precedence before all others on these occasions. Lord Keeper, Sir Robert Henley, did so on 26 July 1759,[119] as did Lord Mansfield, Speaker by commission from the Crown, on 24 October 1765,[120] but not Sir Dudley Ryder who, on 13 May 1755, was authorised to act as Speaker at the prorogations of 1755. The commission was issued by the Regents.[121]

> Commission under hands of the Duke of C[umberlan]d, Chancellor and three more; signed at top as the King's always is under the Great Seal; said at bottom to be by the guardians and justices of the kingdom. For proroguing from 27 May to 1 Jul[y]. I attended on May [27] and the Commission sat on bench under the throne. When they were sat and Speaker at the Bar, I went behind the Prince's chair.

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116. P.R.O. 30/29/4/4, f.527 [n.d.].
117. L.J., xxxii, 601.
118. Harrowby MSS., document 35(q), 30 January 1755.
119. L.J., xxix, 537.
120. Ibid., xxxi, 223.
121. Harrowby MSS., document 35(q), 13 May 1755.

The Lords Commissioners on 27 May 1755 were, in order of seniority, Earl Cornwallis, Lord Berkeley of Stratton and Lord Bathurst.[122] Sir William Lee, a Chief Justice and a member of the Privy Council,[123] similarly could only serve in the capacity of Speaker of the House in the summer of 1743, the part of the Commissioners at all four prorogations at which he presided being taken by the only three peers present on each occasion.[124]

These three served as the necessary quorum of Lords Commissioners[125] and of the House of Lords.[126] Such a situation was often repeated for prorogations during recess, which were invariably very poorly attended.[127] There was at least one occasion when the lack of numbers technically made it impossible to prorogue Parliament. It occurred in the latter part of the eighteenth century, and years later John Hatsell sent the following account of the incident to John Ley.[128]

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122. L.J., xxviii, 415.

123. Dictionary of National Biography, xxxii, 384.

124. L.J., xxvi, 259-65.

125. Harrowby MSS., document 35(q), 19 November [1754]. See also the wording of any commission.

126. H.L.R.O. Historical Collection No.59, John Relfe's Book of Orders, p.29.

127. E.g., L.J., xx, 404(1716), 410(1717), 667(1718); xxii, 570(1725); xxiv, 312(1733); xxvii, 468,470(1750); xxix, 387(1758); xxxiii, 458(1772); xxxv, 815(1779); xxxvi, 364(1781).

128. Ley MSS., 63/2/11/1 enclosure in 97. Thurlow was Lord Chancellor from 1778 to 1792 (supra, p.42,n.35).John Hatsell was Clerk of the House of Commons from 1768 to 1797 when he resigned, though he continued to control the Clerk's department until his death in 1820. During those later years, however, the Clerk's functions in the House of Commons were performed by his deputy, John Ley. Marsden, The Officers of the House of Commons, pp.42-3.

> On a day of prorogation no member attended in the H[ou]se of [Commons], and L[or]d Thurlow was, for several hours, the sole member in the H[ou]se of Lords; so that the commission could not be proceeded upon. Had this continued another quarter of an hour, till 5 o'cl[ock], we had settled that L[or]d T[hurlow] should, of his own authority, adjourn the Lords till the next day, and that I should do the same in the H[ou]se of Com[mons]. Fortunately two lords came in.

The forms to be observed at a prorogation of Parliament were originally laid down by a Standing Order of the House of Lords.[129] The procedure by commission was to be enacted when Parliament had met for business; but the postponement of the opening of a new Parliament to a day later than that appointed by the writ of summons was to be executed by another writ under the Great Seal.[130] This was to be addressed to both Houses, and the procedure, therefore, was for the Commons to be summoned to the Upper Chamber by Black Rod where they stood, hats off, at the Bar of the House, while the lords remained seated and heads covered. Thereupon the Lord Chancellor explained the cause of the meeting: he did so standing and 'uncovered in respect he speaks to the Lords as well as to the Commons'.[131] The writ having been read by the clerk, the Commons were to withdraw and Parliament stood prorogued.[132] At the first prorogation of a new Parliament by writ, the Clerk of the Crown also presented the certificate of the names of the sixteen elected

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129. Standing Order No.7 (1621, revised in 1715).

130. Ibid; Harrowby MSS., document 10, 18 June 1741, and document 21 (part III B).

131. Standing Order No.7.

132. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.42.

Scottish peers.[133] The entries in the Lords Journals for such prorogations, however, make no mention of the presence of the Commons.[134]

Again, the absence of the Lord Chancellor did not obstruct proceedings. Lord Chancellor Macclesfield did not attend the fourth prorogation of the new Parliament on 4 September 1722;[135] Hardwicke missed the third prorogation on 10 September 1741,[136] and the second and third of 1747;[137] Lord Chancellor Henley, also, was absent for the third prorogation on 8 October 1761.[138] Furthermore, a prorogation by writ did not require a quorum of the House to be present : Lord Chancellor Hardwicke was the only peer in attendance on 27 October 1741,[139] while on 8 October 1761 the entire procedure was conducted by the Archbishop of Canterbury, being the only member of the House of Lords present.[140] After a prorogation in this manner, a proclamation was to be issued before the Parliament sat for business.[141]

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133. Ibid., e.g. L.J., xxii, 3-4(1722); xxiii, 160,161(1727); xxv, 667-71(1741); xxx, 102-6(1761).
134. Ibid.
135. Ibid., xxii, 8.
136. Ibid, xxv, 670.
137. Ibid, xxvii, 141,142(10 September, 8 October 1747).
138. Ibid., xxx, 106.
139. Ibid, xxv, 671.
140. Ibid., xxx, 106.
141. H.L.R.O., Parliament Office Papers 58/26, Miscellaneous Papers, 'Form of proroguing a new Parliament by writ'; H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, pp.41-2.

Despite the rule which insisted on the constant attendance of the Lord Chancellor or Speaker in the House of Lords, his role was not as crucial to the conduct of proceedings in the Upper House as was that of his counterpart in the House of Commons. He was not the moderator of the proceedings of the House; he was not addressed in debate, nor was he called upon to settle points of order. All authority lay with the peers themselves, the Speaker being at the same time both the privileged first servant of their assembly and the symbol of their authority.

Hence, the Speaker always uncovered his head when he stood to address the House,[142] or entered into a private conversation with a peer,[143] but remained covered at all other times. As it was customary for the lords to be seated and wear their hats in the presence of the Commons, so did the Speaker of the Upper House if called upon to give evidence before a Committee of the Lower House. On such occasions the Lord Chancellor would be preceded by his mace and purse bearers and, having taken the seat provided for him, would put on his hat so as to assert the dignity of his House, but then uncovered his head before giving evidence.[144] To doff one's hat was a gesture of civility which would not be shown the messengers of the Commons, but if the Lord Chancellor had occasion to address both Houses of Parliament, he would do so uncovered, on the grounds that he was also speaking to the peers.[145]

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142. Standing Order No.2; H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.2; Harrowby MSS., document 35(q).

143. Ibid., 19 November [1754] and 23 September 1755.

144. Campbell, Lord Chancellors, i, 27. This was so with every peer, Clementson Diary, p.165. See infra, p.549.

145. Standing Order No.7 (1621, revised in 1715); see supra., p.506.

No authority or power was invested in the office of Speaker of the House of Lords; its incumbent could only follow and execute the directions and orders given him by the House.[146] He could not initiate any business, but waited for matters to arise either from within the House or without.[147] The resolutions and orders of the House were declared by the Speaker in the name of 'the lords spiritual and temporal in Parliament assembled'.[148] But before doing so he sought the approbation of the House for the motion, for no order could be entered in the minute books of the House until it had been read by the clerk and the assent of the House obtained.[149] Neither could the Speaker adjourn the House without the consent of the assembly;[150] at the conclusion of the day's sitting the Speaker could only adjourn to the next day,[151] for an adjournment of any greater length had to be moved by a peer.[152]

Sir Dudley Ryder thought that, as in the Commons, 'the Speaker's business is to see that nothing indecent or contrary to the rules of the House be said or done'.[153] The rules he referred to were the Standing Orders of the House of Lords, the official title of the

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146. Standing Order No.2 (1621).

147. Harrowby MSS., document 35(q).

148. L.J., passim; e.g. xx, 361.

149. Standing Orders No.2; and No.45 (23 February 1624, 20 May 1626).

150. Standing Order No.2; Harrowby MSS., document 35(q).

151. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.6. E.g., L.J., xxi, 353(1720); xxviii, 223(1754).

152. E.g., ibid., xxiii, 181(1728); xxviii, 287(1754); xxxi, 263(1766); xxxiii, 62(1771); xxxv, 805 (a motion to adjourn from Friday 25 June 1779 to the Saturday).

153. Harrowby MSS., document 35(q).

roll being 'Remembrances for order and decency to be kept in the Upper House of Parliament by the lords'.[154] The Speaker, if a peer, did have the right to address the House on points of order,[155] but his opinion was as liable to be questioned as that of any other peer. His duties were confined to the putting of questions to the House,[156] and of deciding the collective vote;[157] yet on this, too, he might be challenged and the matter resolved by a division of the House. The Speaker of the House of Lords, therefore, had no power to fulfill the role ascribed to him by Ryder except the art of persuasion which, on occasions of gross disorder, was no power at all.[158]

The lords themselves, therefore, were the guardians of order in the House; it was their responsibility to indict members who transgressed the rules of debate,[159] who made personal reflections upon fellow peers,[160] who used unrestrained language.[161] The Standing Order against asperity of speech[162] was particularly difficult to enforce, there being no constant criterion by which to judge. This is reflected in a description of the dispute between Lord Chancellor Thurlow and Lord Grantley during the

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154. H.M.C. Lords MSS., xii (new series), 1.

155. E.g., Debrett, Parl.Register (2nd.series), iv, 231.

156. Supra, p.426.

157. Supra, pp.427-8.

158. On 10 December 1770 there was such chaos in the House that no attention whatsoever was made when 'the noble Lord on the woolsack stood up with his hat off to explain order'. L.J., xxxiii, 23; supra, pp.330-1.

159. E.g., Almon, Parl.Register, x, 432.

160. E.g., Bedford Journal, i, 602; supra, pp.404-5.

161. E.g., B.L. Add.MS.6043, f.86.

162. Standing Order No.15 (13 June 1626).

Committee stage of the Contractors Bill, 6 May 1782 'in the course of [which]... frequent contradictions arose...which were productive of heat, and a warmth approaching to asperity. This continued for near an hour'.[163] There are few instances out of many heated exchanges when offenders were punished for misconduct.[164] When notice was taken of 'personal, sharp, or taxing speeches'[165] the justice of the House was immediate and consistent, the guilty parties being called upon to declare upon their honour that their differences would be dropped and no resentment held. On 10 December 1766, Lord Marchmont called upon Lord Chancellor Camden to take the opinion of the House on a sharp altercation between the Duke of Richmond and the Earl of Chatham,the Lord Privy Seal, but both submitted and asked pardon of their fellow peers.[166] The debate of 30 May 1758 on the Bill for more speedy remedy by Habeas Corpus occasioned a verbal skirmish between Lord Lyttelton and Earl Temple, but although 'the Duke of Argyll and L[or]d Marchmont took pains to work [it] into the form of a quarrel...L[or]d Lyttelton's religion and friendship to L[or]d Temple interposed'.[167] They too apologised and promised to let the matter rest.[168]

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163. Debrett, Parl.Register (2nd.ser.) viii, 258.

164. In most cases, peers were simply called to order; e.g. H.M.C. Portland MSS., vi, 5-6 (20 May 1725); Grenville Papers, iv, 508-15, and Bedford Journal, i, 624.

165. Standing Order No.15 (13 June 1626).

166. L.J., xxxi, 448; Bedford Journal, i, 596; Grenville Papers, iii, 396-7; B.L.Add.MS.32978, ff.258-60; H.M.C. Polwarth MSS., v,365.

167. P.R.O. 30/8/83, f.78. Both Argyll and Marchmont were representative peers.

168. Debrett, Debates, iii, 422; L.J., xxix, 347.

Quarrels between members of the peerage were frowned upon as a slur on the dignity of the House. Therefore a peer who received an affront from another, whether the incident occurred in the debating chamber itself or in any of the ante-rooms within the confines of the House of Lords, had to appeal to the Upper House for satisfaction. Failure to do so, and thereby allowing the insult to develop into a quarrel, made him the guilty party liable to the punishment imposed by the assembly.[169] But all members had a responsibility to report such incidents to the House if they had 'reason to believe a quarrel may ensue'[170] or even if it 'carried the appearance of a quarrel'.[171] For this reason, an injunction of the House was issued against the Earls of Sunderland and Orford in 1719,[172] and against the Earls of Morton and Lauderdale in 1753,[173] the Speaker on each occasion voicing the Lords' demand that the matter go no further.

On 3 November 1780, Lord Chancellor Thurlow took his place at the top of the dukes' bench and brought to the House's attention a rumour that an insult had been perpetrated against a member of that assembly.[174]

> [He rose] to remind their Lordships, that such a rumour had prevailed; and to state to their Lordships, with all due submission, that it was their duty to take some step in relation to the rumour, which to their wisdom should seem most likely to rescue the House from so great an indignity as it would unavoidably sustain, if an insult was permitted to be offered to the person of any one peer.

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169. Standing Order No.16 (9 August 1641).
170. L.J., xxi, 84.
171. Ibid., xxviii, 101.
172. Ibid., xxi, 84; Torbuck, Debates, vii, 114; Parl.Hist.,vii,590.
173. L.J., xxviii, 101.
174. Debrett, Parl.Register (2nd.ser.) iv, 9.

His reminder that anyone with information about the affair should supply the same to the House brought the Earl of Jersey to his feet, to declare that insulting and threatening letters had passed between the Duke of Grafton and the Earl of Pomfret, who were then ordered to attend in their places three days hence.[175]

Thus, on 6 November, both Lords being present, the Lord Chancellor, 'by direction of the House',[176] called on the Duke of Grafton to give an account of his correspondence with the Earl of Promfret, the letters which his Grace produced as evidence being read by the clerk. Pomfret was then given an opportunity to make his defence. Then the Lord Chancellor sought the opinion of the House as to whether one or both peers ought to withdraw, the only precedent being one where both parties were culpable. There being no response from the House, he concluded that they approved of both leaving the chamber, whereupon it was ordered that they withdraw into separate rooms. After more precedents were read, the House proceeded to consider whether Promfret's challenge to the Duke of Grafton 'tended to the breach of the public peace, and the great indignity and dishonour which redounded to this House thereby',[177] and led them to resolve that the Earl was 'guilty of a high contempt of this House'.[178]

The Marquess of Carmarthen, thereupon, moved that the Earl be committed to the Tower of London, which was agreed to by the House

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175. Grafton MSS. Acct.423/357, L.J., xxxvi, 187.
176. Ibid., p.188.
177. Ibid.,p.190.
178. Ibid., p.191.

and ordered. The Earl of Pomfret was summoned to the Bar of the House of Lords where he 'kneeled as a delinquent' [179] to hear the Lord Chancellor proclaim judgement. In contrast, the Duke of Grafton, when called in, was permitted to resume his place but was again obliged to withdraw while their Lordships deliberated and approved a motion to commend his conduct throughout the affair. Shortly before six o'clock that evening, the House of Lords rose and adjourned for a week. [180]

At the next sitting of the House, Monday 13 November, the Lord President, Earl Bathurst, presented Pomfret's petition of pardon, which was ordered to be considered two days later and the Lords to be summoned. Subsequently, on 17 November 1780 the Earl of Pomfret was again brought to the Bar where he heard the Lord Chancellor, who remained seated and his head covered, [181] declare the Lords' censure on his past conduct and their displeasure at the 'heinous insult which [he had] committed upon the dignity and privilege of [the] House'. [182] After agreeing to submit to the House's judgement and to read a statement acknowledging his guilt (the wording of which had been prepared by a Committee of the House), the Earl was discharged from custody and directed to take his place in the House; and there, standing, made his apology, begged the pardon of the House, and promised not to seek vengeance against the Duke of Grafton

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179. Ibid.
180. The General Evening Post, 4-7 November 1780.
181. c.f. Supra, p.508.
182. L.J., xxxvi, 195.

nor any other person.[183]

In December 1766, Richard Rigby sent to his patron, the Duke of Bedford, the following account of an incident in the Lords in which the Lord Chancellor, Camden, was again called upon to be the 'mouth'[184] of the House in expressing their displeasure:[185]

> The counsel made the House wait an hour; upon which Lord Marchmont moved that my Lord Chancellor might reprimand them for making their lordships come to the House and wait for them. His Lordship from the woolsack did it with great severity. The counsel were Yorke, Norton, and the Attorney-General,[186] the last of [whom] was so affected by the reprimand, that when he had pleaded for ten minutes, he was forced to stop short, and beg their lordships to put off the cause till another day, for his spirits were so sunk by the reprimand that he found he could not do justice to his clients, and it was put off accordingly.

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183. The above account is based on: L.J., xxxvi, 187,188-91,193,194, 195-6,196-7; Debrett, Parl.Register (2nd.ser.) iv, 9-20; The General Evening Post, 4-7,11-14,14-16,16-18 November 1780; Leeds Memoranda, pp.36-7; H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.36; H.L.R.O., Parliament Office Papers 354, Precedents Book, pp.38-62.

184. Standing Order No.1 (1621).

185. Bedford Corr., iii, 361 (3 December 1766); L.J., xxxi, 442.

186. Charles Yorke was Solicitor-General 1756-61, and Attorney-General 1762-3 and 1765-6. He was M.P. for Reigate 1747-68 and for Cambridge University 1768-70. On 17 January 1770, he was appointed Lord Chancellor, but died three days later. (Namier and Brooke, House of Commons 1754-90, iii, 675-8). Sir Fletcher Norton was Solicitor-General 1762-3, and Attorney-General 1763-5. He was M.P. for Appleby 1756-61, Wigan 1761-8, and Guildford 1768-82. Between 1770 and 1780, he was Speaker of the House of Commons. On 9 April 1782, he was created Baron Grantley of Markenfield and took his seat on 16 April (ibid., pp.214-7).
The current Attorney-General was William De Grey, appointed to the post in August 1766, having been Solicitor-General 1763-6. He was M.P. for Newport 1761-70, and Cambridge University 1770-1. In January 1771 he succeeded Sir John Eardley Wilmot as Chief Justice of the Court of Common Pleas. On 17 October 1780 he was created Baron Walsingham (ibid., ii, 308-9).

The role of Speaker of the House did have its pleasanter aspects. The House could order him to voice their thanks to a person or persons for a service rendered to the assembly itself or to the nation. The proper method for doing so was by a letter from the Lord Chancellor;[187] whereas, if gratitude was to be extended to members of the House, the Speaker simply addressed the peers concerned from his place on the woolsack.[188] A Lord Chancellor again acted as the representative of the Lords when an Address was to be presented to the Crown.[189]

The Speaker of the House of Lords could only participate in the debates of the assembly if he himself was a peer.[190] Sir Robert Henley, Lord Keeper of the Great Seal from 1757 to 1761, complained incessantly of the disadvantage he suffered both in Westminster Hall and in the House of Lords for want of a peerage.[191] He often had to stand by and watch his decisions in the Court of Chancery be reversed as a result of an appeal to the House of Lords without even the right to defend his judgements, as he was not a member of the House.[192] George III, too, realised the importance of the

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187. B.L. Add. MS.6043, f.316; L.J., xxv, 545. Likewise, the House could instruct him to convey information to certain persons in like manner: e.g., ibid., xxiv, 465 (1735); B.L.Add. MS.35878, ff.250,253(1717,1719).

188. E.g.,Parl.Hist., viii, 233; L.J., xxii, 158(1723).

189. For an account of this ceremony, see Harrowby MSS., Vol.1128, 12 November 1747.

190. Ibid., document 21 (part III B).

191. E.g., B.L. Add.MS. 32891, ff.395,406(1759).

192. Walpole, Memoirs of George II, iii, 274-5. Henley was raised to peerage in 1760, Supra, p.487.

Speaker having a voice in the proceedings of the Lords, and defended his decision to give Edward Thurlow a peerage on appointing him Lord Chancellor in 1778 against accusations of favouritism in no uncertain terms: 'I want an able Chancellor, and therefore have pitched on Mr.Thurlow. It is no preference, the giving a man a peerage because he holds an office in which he cannot be of complete use without a seat in the House of Lords'. [193]

To make use of his right to speak, the Lord Chancellor had to leave the woolsack and take his place at the top of the bench reserved for the Great Officers of State. [194] In practice, he simply stepped a little to one side of the woolsack from where he addressed the House. [195] The Lord Chancellors were usually regular and frequent speakers in debate. In many cases their contribution was on points of order; but since the appointment and tenure of the office was dependent on the pleasure of the Crown, [196] it inevitably made the incumbent an active political partisan of the government. The support of a widely respected and influential Chancellor was of inestimable value to a ministry. This was clearly manifested in a letter written by the Duke of Newcastle to Lord Hardwicke in 1739. [197]

> The great and deserved weight and credit, which your Lordship has, both in the House of Lords, and in the Council, arise undoubtedly from those great qualities,

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193. Fortescue, Corr. of George III, v, 96.
194. Standing Order No.2 (1621). Supra., p.290.
195. H.L.R.O., Historical Collection 59, John Relfe's Book of Orders, p.39.
196. E.g.,Fortescue, Corr. of George III, v, 90 (1778).
197. Coxe, Pelham Administration, i, 39 (14 October 1739).

> which are inseparable from you; to which those that are at present in the King's service, in the House of Lords, do the greatest justice and pay the greatest deference : and it is no disagreeable circumstance, in the high station in which your Lordship is, that every man in the House of Lords now knows that yours is the sense of the King's administration, and that their interest goes with their inclinations, when they follow your Lordship.

Being the nominee of the Crown meant that the office of Lord Chancellor did not change hands as often as several of the other offices of state upon the formation of a new ministry. The Earl of Northington, first appointed as Lord Keeper in 1757 and made Lord Chancellor in 1761, held the post under successive ministries until 1766 when his disillusionment with the last of these, the first Rockingham Government, brought about its dismissal.[198] A Chancellor's silence in an important debate in the Lords, therefore, was considered significant and an open attack on his colleagues in office was indicative that the continued existence of a ministry was in the balance. On 6 April 1781, Lord President Bathurst moved that the House take the tithe laws into consideration on a named day.[199] This occasioned a violent attack on Bathurst and the Ministers by Lord Chancellor Thurlow, and led to much speculation that he was about to resign.[200] Thurlow, however, remained in office and, furthermore, he survived the fall of the North Administration in 1782 when it was replaced by the second Ministry led by the Marquess

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198. The several ministries were: Pitt-Newcastle (1757-61), Bute-Newcastle (1761-2), Bute (1762-3), Grenville (1763-5), Rockingham (1765-6); Langford, Rockingham Administration, pp.251-8 .

199. L.J., xxxvi, 264.

200. Leeds Memoranda, p.43.

of Rockingham. But the King's dislike of his new servants was reflected in proceedings in the Lords early in May 1782. On the first of the month, the Lords debated whether to commit the Government's Bill for excluding contractors from the House of Commons. The Marquess of Carmarthen commented that 'the Ch[ance]llor opposed it with violence, and his speech was looked upon as extremely hostile to the new Ministers...two days afterwards the Ch[ancellor] and the D[uke] of Richmond had high words on the Cricklade Bill. I cannot account for my friend the Ch[ancellor's] behaviour, as he certainly might have opposed those particular Bills in a more friendly manner'.[201]

At times, a Lord Chancellor's loyalty to the King's administration conflicted with his allegiance to old friendships. Hence, on 9 January 1770, after his great friend the Earl of Chatham had proposed his amendment (concerning the House of Commons' expulsion of John Wilkes) to the Address in Reply,[202] Lord Chancellor Camden left the woolsack, and is reported to have said, 'I accepted the Seals without any conditions. I meant not to be trammeled by his Majesty (I beg pardon) by his Ministers. I have suffered myself to be so too long,'[203] and then proceeded to voice his concurrence with Chatham's motion, which was in a division of 100 to 36 rejected by the House. A few days later, on 15 January, the Lords adjourned for a week.[204] When they resumed on 22 January, Camden no longer occupied the woolsack; the 'wretch'[205] chosen as his successor, Charles Yorke, had died and a commission had been issued to enable Lord Mansfield to sit as Speaker

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201. Leeds Memoranda, p.67.
202. L.J., xxxii, 395.
203. Rockingham Memoirs, ii, 137.
204. Lyttelton Memoirs, ii, 752; L.J., xxxii, 403 (15 January 1770).
205. Rockingham Memoirs, ii, 137.

of the House, which he fulfilled for the next twelve months.[206]

The Lord Chancellor's association with the government of the day led to various opposition attempts to embarrass him in his role as Speaker of the Upper House. The concerted and united efforts of all opposition factions in the Lords with regard to proceedings on the Indemnity Act passed by the Massachusetts Assembly took a curious turn on 26 May 1767 when the Committee of the Whole House resumed consideration of the affair. The wording of the second question,which Earl Gower proposed should be put to the judges, was considered to be that of an opinion given by Lord Chancellor Camden as Attorney-General in 1759. Hence, the Duke of Newcastle was confident that 'the Chancellor will [not] have the force to give a negative to it'[207] and so 'we may perhaps get the resolution to pass in the House, though we should lose the putting the question to the judges'.[208] Eighteen months later, the same unfortunate Lord Chancellor, having been ordered by the House to reprimand Henry Baldwin, editor of the St.James's Evening Post, for publishing an offensive letter by John Wilkes, executed his duty with a very lengthy and vehement lecture. The ensuing incident was described to Lady Chatham by her brother, Earl Temple:[209]

> So much to the taste of the Bloomsbury Gang were the doctrines laid down by him on the subject of libels, that Lord Sandwich most kindly moved, that he might be

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206. L.J., xxxii, 404; Infra.,Appendix IV.
207. B.L. Add.MS. 32982, f.111 (24 May 1767).
208. Ibid., f.95 (23 May 1767).
209. P.R.O. 30/8/62, f.208 [n.d.] ; L.J., xxxii, 213 (16 December 1768).

> desired to print it. The Ch[ancellor] modestly declined it and said he did not remember one word of it, nor more than he did of the first chapter of Genesis. Lord S[andwich] replied that his own memory was very good, and he was so much struck with it that he could undertake to repeat almost every word and, therefore, persisted in his motion; upon which my late L[or]d C[hief] Justice Pratt was obliged to comply.

On the third reading of the Militia Bill, 27 March 1781, the Duke of Richmond employed an earlier pronouncement by Lord Chancellor Thurlow, on the proper method of introducing a motion or bill for revising an existing law, to support his own amendment against the measure then being considered. His effort, however, was not successful, for the Bill passed without a division.[210]

The office of Speaker of the House did not restrict the occupant from exercising a peer's right to introduce a bill for legislation. Lord Chancellor King presented the Bill for the more effectual punishment of forgery on 25 February 1729.[211] Lord Hardwicke was responsible for bringing in the original Bill to abolish heritable jurisdictions in Scotland, 1747.[212] Ten years earlier, in 1737, the latter had been particularly active in promoting the passage of the Bill against the City of Edinburgh, following the Porteous affair in the city. Lord Hervey, admittedly not an admirer of Lord Chancellor Hardwicke, wrote that he 'justified the Bill in all its parts with

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210. Debrett, Parl.Register (2nd.ser.), iv, 190-1.

211. Timberland, History, iv, 10; L.J., xxiii, 319,332.

212. Harrowby MSS., document 21 (part III), 24 March 1747; L.J., xxvii, 45. This Bill was dropped because of its financial clauses which would be unacceptable to the Commons. The new measure was initiated in the Lower House. Yorke, Hardwicke, i, 605-6; B.L.Add. MS.35385, f.67; L.J., xxvii, 114.

such a parental partiality that nobody who heard him could be at a loss to guess who was the political father of the Parliamentary child'.[213] Another of Lord Hardwicke's projects, the Marriage Bill of 1753, caused a crisis in the relationship between the members of the two Houses of Parliament.[214]

> The Commons abuse the Barons, the Barons return it. In short, Mr.Fox attacked the Chancellor violently on the Marriage Bill, and when it was sent back to the Lords, the Chancellor made the most outrageous invective on Fox that ever was heard. But what offends still more (I don't mean offends Fox more) was the Chancellor's describing the chief persons who had opposed his Bill in the Commons, and giving reasons why he excused them. As the Speaker [of the Commons] was in the number of the excused, the two Maces are ready to come to blows.

Of the nine Lord Chancellors who presided in the House of Lords between 1714 and 1784, two emerge as having had a greater influence on the conduct and proceedings of the House than any others.[215] The first of these was Lord Hardwicke who held the office for twenty years. His weight and superiority in debate[216] made him unassailable, and his opinions so valued and influential that few differed from him. His execution of the role of Speaker has been described by one biographer as follows:[217]

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213. Hervey, Memoirs of George II, iii, 107.
214. Walpole, (Yale) Correspondence, ix, 149; L.J., xxviii, 150-3.
215. Insufficient evidence prevents making an assessment of the effectiveness of each as Speaker.
216. Yorke, Hardwicke, i, 370-1.
217. Campbell, Lord Chancellors, v, 50.

> His demeanour on the woolsack appears to have been a model for all Chancellors. While he was affable and courteous, he studied to preserve order. He himself attended to the debates, and his example and influence generated a habit of attention and decorum among others. Though, in strictness, with more authority than any other peer, all sides recognised him as moderator, and by his quiet and discreet exertions unseemly altercations and excessive familiarity were effectively discouraged.

The other who came to exercise a comparable authority in the House of Lords was Lord Thurlow. His main assets were a sharp tongue and intimidating manner, which he employed unceasingly to establish formality and order in debate. He considered the lax adherence to the rules of debate as 'very unbecoming the gravity and dignity of their lordships' proceedings'.[218] Hence, throughout his tenure of the woolsack, he set out to fulfill the promise given to George III early in his career as Speaker, that 'the House of Lords did not know how to debate properly, but he would bring them into better order'.[219] The influence wielded by these two occupants of the woolsack indicates that the Speaker, particularly if he was a peer and a respected lawyer, could, by his determination and knowledge of the procedures of the House, extend his own authority beyond the boundaries established by the Standing Orders.[220]

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218. Parl.Hist., xx, 36.

219. Walpole, Last Journals, ii, 216.

220. E.g. H.M.C., Hastings MSS., iii, 39(1743).

XVI

'THE OTHER HOUSE'

The House of Commons and the House of Lords were two equal, but independent, institutions in the Parliamentary structure of Great Britain. The organization and business of both Houses were conducted separately, and each House had recognised functions which lay beyond the jurisdiction of the other body. Nevertheless, as constituent parts of the same legislature, communication between the two was necessary. The procedures for this were carefully observed Parliamentary conventions.

The simplest form of communication between the Houses was by message. Messages would be sent daily from one House to another to convey a variety of matters: for delivering bills which had completed all their stages in one House,[1] for communicating the resolutions of one House to the other,[2] or for requesting joint addresses.[3] Messages also would always precede a conference of the two Houses of Parliament.[4] Each House had its own messengers. Messages from the Commons to the Lords were carried by a member of the Lower Chamber who was to be appointed by a decision of the House.[5] In practice, the official bearer was chosen by the Speaker on the grounds of his

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1. E.g., L.J., xxx, 304(1762).
2. E.g., Hatsell, Precedents, iii, 60-1; L.J., xxx, 531,534; C.J., xxix, 1002,1010.
3. H.L.R.O., Parliament Office Papers 354, Precedents Book, p.64., e.g., L.J., xxv, 484(1740), xxxii, 152,153(1768).
4. See infra., p.529.
5. Hatsell, Precedents, iii, 26.

being the instigator or a keen supporter of the subject matter of the message.[6] The messenger, however, had always to be accompanied by other M.Ps., for it was a practice of the Lords never to accept a Commons message unless it was attended by eight members of that House.[7] Thus, when the messenger took the message from the Table, the Speaker called out: 'Gentlemen, attend your messenger'.[8] The Commons' deputation to the Lords could at times be quite numerous, especially on such occasions when the House wished to demonstrate its unanimity and approbation of a measure.[9] On 19 March 1734, 'almost all the members of the House' accompanied William Pulteney to the House of Lords with the Bill to naturalize the Prince of Orange.[10] George Onslow estimated that 150 demonstrated their approval of the Declaratory Bill when it was sent to the Lords for consideration on 5 March 1766,[11] while 'an immense body of gentlemen' brought up the Bill for regulating the affairs of the East India Company when delivered by Charles James Fox on 9 December 1783.[12]

Upon arriving in the vicinity of the House of Lords it was the duty of the Commons' messengers to notify the Gentleman Usher of the Black Rod of their presence, who, from the Bar of the House, acquainted their lordships that the messengers awaited. The question

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6. Ibid.
7. Ibid.
8. Ibid.
9. See infra., p.529.
10. H.M.C. Egmont Diary, ii, 64; also infra., p.539.
11. Chatham Corr., ii, 403.
12. Debrett, Parl.Register (2nd.ser.), xiv, 17. For other examples, see Walpole, Last Journals, i, 310(1774); Wraxall Memoirs, ii, 284(1782).

had then to be put whether the messengers be received, whereupon they were admitted into the House, but as yet they were not to approach the Bar. The Lord Chancellor, taking the purse of his office but leaving his hat on the woolsack, then walked to the centre of the Bar, returning each of the bows made by the M.Ps as they too approached. Having delivered the message, the Commons' messenger and his colleagues were to retire backwards again, making three bows, each being acknowledged by the Lord Chancellor who then returned to the woolsack. Throughout the ceremony, the peers remained seated with their heads covered.[13] The message had then to be reported by the Lord Chancellor to the Lords, 'who do help his memory if anything be mistaken'.[14] If an answer was required, the Commons' delegation was to wait in the lobby until summoned into the House again, which they would enter as before, and received the answer of the House from the Lord Chancellor, now seated on the woolsack and wearing his hat. If the Lords could not arrive at a decision immediately, Black Rod would be instructed to tell the waiting deputation that the Lords would send a reply by their own messengers.[15]

The procedure which the Lords were to follow when sending messages to the House of Commons was embodied in the Roll of Standing Orders. Their messages had to be borne by two messengers who were never peers but attendants of the House, namely, the Master of the Rolls

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13. Standing Order No.35 (1621); H.L.R.O. Parliament Office Papers 74/1, John Croft's Precedent Book, pp.6-7; Walpole, Memoirs of George III, iv, 145.
14. Standing Order No.35.
15. Ibid.

or Masters in Chancery, or their assistants.[16] 'Weighty causes',[17] that is bills relating to the Crown or royal family, were to be carried by the judges. Because of this distinction in the personnel of the messengers, the Commons were vigilant that the proper order was always observed. Thus, on 22 January 1751, it was noted in the Commons Journals that the Lords sent a message that day by a Master in Chancery and the Clerk of the Parliaments.[18] On 1 April 1772, the Lower House refused to allow its Speaker to report the message from the Lords because it had been delivered by a Master in Chancery and a Clerk Assistant.[19] A Committee was appointed to examine precedents, after which the Commons sent a message of their own to the peers expressing the hope that no precedent was being set. The Lords' answer resolved the issue: the unusual method had been adopted simply because the other Master in Chancery was ill.[20]

The Commons' procedure for receiving the messengers of the Upper House was similar to that of the Lords. The messengers had to be announced to the Commons by the Serjeant at Arms, and also, a question had to be put and passed for calling in the messengers.[21]

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16. Standing Order No.36 (1621).
17. Ibid. When no two judges were available, the duty was to be performed by one judge and a Master in Chancery; May, Parliamentary Treatise, p.250.
18. C.J., xxvi, 8.
19. Ibid., xxxiii, 645-6. For an account, see Walpole, Last Journals, i, 77.
20. C.J., xxxiii, 679-82 (9 April 1772); L.J., xxxiii, 357 (13 April 1772); Clementson Diary, pp.156-7; Hatsell, Precedents, iii,25-6.
21. Ibid., pp.28-9. The House of Commons only once refused to receive the Lords' messengers: this was on 1 July 1717, during the dispute as to the manner of proceeding at the trial of the Earl of Oxford. C.J., xviii, 614.

The Serjeant then took the Mace and escorted the Lords' messengers as far as the Table in the House of Commons, walking on their right hand, all making three bows as they approached.[22] As a mark of respect, the Lords' deputation appeared before the Commons with heads uncovered.[23] At the Table, one of the masters would read the message; legislative measures would be delivered to the clerk of the House. When they had withdrawn, the Mace was replaced on the Table.[24] The Lords' messengers, however, would always be re-admitted to the Commons' chamber, either to receive their answer or to be told that the Lower House would reply later by its own messengers.[25]

The sending and receiving of such communications was conducted with the utmost decorum and respect. It was the practice of both Houses to interrupt their proceedings at the first appropriate moment, so as not to detain the messengers of the other House unnecessarily. For example, the Lords discontinued their second reading of an attainder bill on 27 April 1716 so as to admit messengers from the Commons, but then resumed proceedings on the bill with the examination of witnesses.[26] The House of Commons succeeded in receiving the Lords' messengers on 15 February 1744 while a debate was still in progress.[27] However, both Houses took exception to any irregularity in this standard procedure. The Lords, for example, resented any attempt to impose undue pressure on them to look favourably on a

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22. May, Parliamentary Treatise, p.252.
23. Thomas, House of Commons, p.335.
24. May, Parliamentary Treatise, p.252.
25. Ibid.; Hatsell, Precedents, iii, 28.
26. L.J., xx, 341; another example, xxi, 117(1719).
27. Hatsell, Precedents, iii, 25; N.L.W.MS.1352, ff.187.

measure , such as a message stressing the Commons' concern for a bill,[28] or that the whole House of Commons should attend their Speaker to the Lords with a bill.[29] The Commons, similarly, objected to a Lords' 'communiqué' stating that a bill had been passed nemine contradicente on the grounds that this was meant to influence their consideration of the measure. Such an incident on 15 July 1717 led to the Commons' request that a conference between the two chambers be held.[30]

A conference was the formal procedure designed to allow consultation on the more important matters of Parliament and for reconciling disagreements between the two Houses. Either House could ask for a conference, but was obliged to state what the subject matter would be.[31] This was partly an act of courtesy; it was also pragmatic so that the other House could decide whether the issue deserved such a solemn proceeding, or whether the issue invaded the privileges of that House , in which case the request would be denied. Subjects considered valid causes for holding a conference were as follows:[32] to communicate resolutions or addresses to which the concurrence of the other House was desired;[33] issues relating to the privileges

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28. H.M.C. Egmont Diary, i, 140(1731).
29. Ibid., pp.80-1(1730).
30. L.J., xx, 544; Hatsell, Precedents, iii, 24.
31. Ibid., iv, 20, 45-6; May, Parliamentary Treatise, p.253.
32. This is based on May's list, ibid., pp.252-3.
33. E.g., L.J., xxiii, 72(1727); xxvii, 479(1751), Walpole, Memoirs of George II, i, 8-10. But no conference was possible after either House had individually addressed the Crown on an issue; see B.L.Add.MS.6043, f.66.

of Parliament, or to the method of proceeding in Parliament;[34] matters affecting the peace and safety of the kingdom;[35] to explain dissent over amendments made by one House to legislation already passed by the other;[36] to desire factual information as to the reasons bills had been passed by the other House.[37] A conference concerning a bill was to be requested by the House in possession of the measure at the time.[38] This would usually occur when the bill had been returned to the House in which it had been initiated, for the most frequent cause for calling a conference was disapprobation of amendments made to a bill during its stages in the second House. However, it was not considered proper to interfere in the proceedings of the latter (by requesting a conference) while the measure was still pending there. The House which commenced the conference procedure would return the bill to the second House, therefore, at the same time as it presented its reasons[39] for disagreeing with the amendments. If the second House was persuaded to accept the reasons and withdraw its amendments, it simply sent a message to this effect to the first House. If, however, the second House insisted on all or some of the changes it had made, it was the responsibility of its members to call another conference and explain why they so persisted. Either House was free at any time to withdraw from its adopted position.[40]

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34. E.g., L.J., xx, 515-516(1717).
35. E.g., ibid., xxv, 431-2(1739).
36. E.g., ibid., xx, 187-8,188(1715); xxiv, 140-41(1732); xxxiv, 374-5(1775).
37. E.g., ibid., xxv, 121,122(1737); The Morning Post, 24 May 1775.
38. Hatsell, Precedents, iv, 43.
39. Infra., p.531.
40. May, Parliamentary Treatise, pp.255-6.

The procedure was initiated when a House, having identified a contentious issue and desiring a conference to resolve the matter, appointed a Committee[41] to draw up reasons explaining their position which would be presented to the other House at the conference.[42] When the Committee had made its report, and it had been approved, messengers were sent to the appropriate House to make known the request for a conference. If this message was received by the Lords it was necessary for a peer to move that the Lords grant a conference with the Lower House;[43] and if this was agreed to, the Commons' messengers were recalled and notified by the Lord Chancellor as to the time and place of the conference, the latter invariably being the Painted Chamber.[44] This right of appointment rested solely with the Upper House.[45] Both Houses next proceeded to elect a delegation of their members to manage the conference on their behalf. The names of those nominated were simply called out by their fellow members and noted by the clerk.[46] However, if insisted upon, the name of each one could be moved separately and a question put on his

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41. The quorum of this Committee in the House of Lords was five. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.18.
42. Ibid.; May, Parliamentary Treatise, p.254.
43. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.10.
44. Ibid.; Standing Order No.37 (1621).
45. Hatsell, Precedents, iv, 45; May, Parliamentary Treatise, p.245. If the conference was at the Lords' request, this information would be conveyed to the House of Commons in the Lords' initial message. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.19.
46. Ibid., p.10. e.g., L.J., xxi, 127(1719); xxxiv, 189(1774).

being a manager for the House.[47] If the conference was being held at the instigation of the House of Lords, it was customary for the House to appoint the Committee chosen to draft its reasons as its managers;[48] but in all instances the representation of the Commons was double that of the Lords.[49]

The Commons were always expected to go first to the Painted Chamber and there await the arrival of the Lords.[50] Once the names of the managers had been called over and they had departed for the conference chamber, the Speaker immediately adjourned the Commons without any question being put, and did not resume his Chair until the delegation returned.[51] The Lords, meanwhile, remained in their chamber until Black Rod signified that the Commons were ready, whereupon, as their names were called over by the clerk, each of the managers stood up in turn, having previously removed his hat, but as they passed below the Bar and left the House, each covered his head again.[52] To ensure the order and dignity of their procession to the Painted Chamber

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47. Hatsell, Precedents, iv, 19 and n. On 27 March 1770, twenty-three of the thirty peers present were appointed Lords' managers at the conference, desired by the Commons, concerning a libellous newspaper called The Whisperer. Among the managers was the Earl of Rochford whose name, however, does not appear in the presence list for that day; ibid., xxxii, 506.
48. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.19. The same was true for the Commons; May, Parliamentary Treatise, p.255.
49. Ibid., p.254.
50. Standing Order No.37 (1621).
51. Hatsell, Precedents, iv, 47.
52. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, pp.16-17.

the peers were to proceed 'thither in a whole body and not some lords scattering before the rest, which both takes from the gravity of the lords, and besides may hinder the lords from taking their proper places'.[53] The House of Peers, too, adjourned 'during pleasure' in the absence of the managers.[54] Once within the Bar of the Painted Chamber, the peers gave salutation to the Commons by removing their hats as they walked to their places,[55] where throughout the ceremony they remained seated and kept their hats on.[56] The Commons, however, both before the coming of the Lords and during the conference itself, remained standing, heads bare, at the Table:[57] the only exception would be by special dispensation to some 'infirm person, and that by connivance, in a corner out of sight to sit but not be covered'.[58] These conventions had given rise to a contemporary saying, 'that the Commons never make so poor a figure as when they meet the Lords at a conference'.[59]

The function of the managers was extremely limited : their duty amounted to no more than the presenting or receiving of the written

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53. Standing Order No.37 (1621).

54. E.g., L.J., xx, 188(1715). The temporary adjournment of both Houses enabled other interested persons to attend, as permitted by Lords Standing Order No.39 (1621) which granted admission to a conference to members of the House of Lords and heirs or eldest sons of peers, but to none other. Standing Order No.38 (1624), however, made explicitly clear that only members of the Committee were to speak at the conference.

55. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.17; e.g., Harrowby MSS., document 21 (part ii) 21 January 1751.

56. Standing Order No.37 (1621).

57. Christie's Sale, 29 April 1981, lot 66.

58. Standing Order No.37.

59. B.L.Add.MS.32502, f.85.

'reasons' or resolutions. The managers for the House which had called the conference were simply to read the prepared reasons and deliver them to their counterparts; the latter were not expected to defend their House's adopted stance; they were there only to listen.[60] A conference was not an occasion for debate or arbitration. Moreover, the actual business of the conference was conducted by two of the managers only; for the Commons, he who was appointed the 'head of the managers',[61] and for the Upper House, 'the lord first in rank who went to the conference'.[62] Both were referred to as the ones who had 'managed' the conference for their respective Houses.[63] In the Painted Chamber, the Lords' manager sat in the middle of the peers who had accompanied him, while his Commons counterpart stood directly opposite.[64] The leading peer always stood with head uncovered to receive the document of reasons from the manager of the other House;[65] but if it was his task to read the paper, he did so seated in his place, head still covered, having simply doffed his hat in salutation before commencing to read , as he was to do again when handing the reasons to the Commons' manager.[66] When all the

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60. Hatsell, Precedents, iv, 47-8; May, Parliamentary Treatise, p.255.
61. Harrowby MSS., document 7P, 17 May 1737.
62. H.L.R.O., Parliament Office Papers 74/1; John Croft's Precedent Book, p.11. This would often be one of the Great Officers of State (e.g., L.J., xxxii, 506) though not necessarily so (ibid., xxx,263). By the eighteenth century it was no longer customary to appoint the Lord Chancellor to perform this duty (cf. B.L.Add.MS.32982, f.211, which cites an example from 1697).
63. Harrowby MSS., document 7P, 17 May 1737; H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.18.
64. Harrowby MSS., document 7P, 17 May 1737.
65. Ibid.
66. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.17.

formalities had been observed, the Commons' representatives were to remain standing while the Lords took their leave;[67] they once more removed their hats as a sign of respect to the Commons, but immediately replaced them until they entered within the Bar of their own House.[68]

When both delegations had returned to their respective assemblies the proceedings of each House were resumed, so that the leading managers could report to the House concerned.[69] In the Upper Chamber the conference delegates were not to return to their places but were to stand uncovered around 'the lord first in rank' while he made his report, standing at the lower end of the clerks' Table, near the barons' bench.[70] Then all resumed their places in the House. In the Lords, the document of reasons would be read by the clerk, whereupon a motion would be made for considering the whole report, either at once or on a future date.[71] If the decision was to postpone the consideration of the report, there could be no communication between the Houses on the issue until a reply was sent.[72] When the House had decided finally on its reponse to the conference its answer had to be conveyed to the other House at another conference. The procedure followed would be exactly the same, the cause being defined as the subject matter of the previous conference,

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67. Harrowby MSS., document 7P, 17 May 1737.
68. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.17.
69. Ibid., p.21. E.g., L.J., xxx, 482(1764); C.J., xxxiv, 749.
70. Standing Order No.38 (1624). H.L.R.O. Parliament Office Papers 74/1, John Croft's Precedent Book, p.17.
71. Ibid., p.11; e.g., L.J., xxx, 263(1762), cf. C.J., xix, 629-30 (1721).
72. May, Parliamentary Treatise, p.253.

and consequently the same Committees of peers and M.Ps would be appointed to manage the proceedings.[73] If after two conferences both Houses were still unwilling to compromise, the measure had either to be lost or a free conference be held.

'Free conferences are the most ancient and established methods for adjusting the differences that have at any time arisen between the two Houses; and...is the only method to preserve a good correspondence between them on such occasions'.[74] This definition was drafted by the House of Commons and presented by them to the House of Lords at a conference on 1 July 1717. It formed one of their arguments for stressing why the Lords should not refuse a free conference 'at this time... of the highest importance, because a misunderstanding on this account would tend to defeat the trial of the impeachment of the Commons',[75] the accused being Robert Harley, Earl of Oxford. The formalities to be observed at a free conference were the same as at the preceding conferences, except that the managers were no longer restricted to the formal communication of the written reasons but were at liberty to employ their own arguments and counter objections in an attempt to effect the agreement which the more formal procedure had failed to achieve. The whole structure was intended to allow a discussion of the issue involved. Neither delegation, however, was authorised to make any decision, but had to report to their respective Houses. Should a House decide to abandon

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73. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, pp.11-13.

74. L.J., xx, 523.

75. Ibid.. No free conference was held, p.524.

its position it need only send a communication to that effect by the usual messengers. If their disagreement persisted, however, there could be no other conference after a free conference, except another of the latter kind on the same subject, unless it be on a new issue of privilege or procedure arising from earlier consultations.[76] Where legislation was at stake, after a total of three free conferences the House had to decide whether to agree to its amendments or not. If it decided not to insist, a message would be sent to the other House to acquaint its members of the changed position. If the former decided to persist, no communication would be sent, and the bill would be lost.[77]

The conference procedure was the established Parliamentary convention for settling harmoniously the disputes that arose between the two Houses. An avowed desire for an amicable solution prefaced the document of reasons presented from one House to another whenever they were close to a serious rift in their relations.[78] Consequently, both assemblies were conscious of the affront that might be taken if either failed to attend a conference at the appointed time, and therefore,at the first opportunity, promptly sent apologies for their absence.[79] The Lords would then appoint another time for the

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76. Hatsell, Precedents, iv, 48-9; May, Parliamentary Treatise, p.256.

77. H.L.R.O., Parliament Office Papers 74/1, John Croft's Precedent Book, p.16. For the procedure at free conferences, see pp.13-16.

78. E.g., ibid., p.18; C.J., xxxii, 94,97(1768).

79. E.g., B.L.Add.MS.35878, f.282; C.J., xviii, 390; L.J., xx, 303-4(1716). Harrowby MSS., document 21 (part II), 22 April 1740; L.J., xxv, 519,520; C.J., xxiii, 525,525-6.

conference to be held. Between 1714 and 1784, there were forty-nine[80] conferences between the House of Lords and the House of Commons. There were but two free conferences in the same period, the last of which was held in 1740;[81] there was none other until 1836.[82]

During the latter part of the eighteenth century, innovatory attempts were made by the active opponents of George III's ministries to use the conference procedure as a delaying tactic against government measures. In June 1767, the opposition group led by Newcastle and Rockingham considered doing so against the East India Dividend Bill, the precedent being that the Lords had on several occasions requested a conference with the Commons to ascertain on what grounds they had proceeded on bills relating to private property.[83] The motion for a conference was duly made on 17 June 1767 when, after a long debate, the question was lost by 57 votes to 98.[84] This formed one of only four motions for a conference, made by one of its own members, to be refused by the Lords. Another two were similarly politically motivated actions involving the East India Commissioners Bill (21 December 1772)[85] and the East India Regulation Bill (11 June 1773).[86]

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80. This figure is based on those listed in the Index to the Lords Journals. No others have been found.
81. L.J., xx, 659,660(1718); xxv, 520(1740).
82. Turberville, The House of Lords in the Eighteenth Century, p.20.
83. B.L.Add.MS.32982, f.209.
84. L.J., xxxi, 638; Parl.Hist., xvi, 346-7 n.
85. L.J., xxxiii, 487; Sainty and Dewar, Divisions.
86. L.J., xxxiii, 669; Parl.Hist., xvii, 904. For the fourth instance, see infra., p.554.

The relationship of the Houses of Parliament during the eighteenth century was coloured by the efforts of both to preserve and safeguard their own rights and privileges against the encroachments of the other and to retain within their own jurisdiction the matters which arose and appertained to each particular assembly:[87] the Commons, for instance, resented the circumstance that the Septennial Parliaments Bill, the enactment of which mainly affected their chamber, had nevertheless been first introduced into the House of Lords.[88] The period witnessed a growing and keen rivalry between the two chambers for the premier position in the legislature which, coupled with an overriding desire on occasions to please the Crown, could result in awkward and critical situations. In March 1734, the two Houses contested for the honour of initiating a bill to naturalise the Prince of Orange. A bill to the same purpose was introduced in each House and, on 19 March, anxious not to give the Lower House the victory, the Lords kept the Commons' messengers with their Bill waiting outside for over an hour while the Lords completed the stages of their Bill. William Pulteney took the unusual step of drawing attention to this discourtesy upon presenting the Bill to the Lords, but, strangely, no exception was taken to the innovation by peers, perhaps because they had attempted to outmanœuvre the Commons by sending their engrossed Bill to the Lower House before receiving the Commons' message. Their efforts, however, were foiled by Speaker Onslow who, aware of the developments in the Lords, adjourned

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87. E.g., Hatsell, Precedents, iii, 61. For examples of legislation encroaching on the privileges of each House, see ibid., pp.58-61.

88. Turberville, The House of Lords in the Eighteenth Century, p.165; e.g., Parl.Hist., vii, 316.

proceedings in the Commons. In the event, the duel which would not have been 'for the honour of the Prince of Orange' was avoided by a compromise arrived at by ministers in both Houses, namely, that the Lords would pass unamended the Commons' introductory Bill, who in turn would concur with the naturalisation bill drafted by the Lords.[89]

Another bone of contention was the Commons' inability to administer an oath to those summoned as witnesses before the House. The Lords had never recognised the Commons' right to do so, and it was probably Sir Robert Walpole's advocacy of the need to maintain good relations with the Upper House in order to obtain their essential concurrence to a joint petition to the Crown for the removal of a judge that swung the vote in the Ministry's favour in the Commons on 13 February 1722, albeit by two votes. The proposal that witnesses should be examined on oath had gained considerable support when it became known that the witnesses in the case against Sir Francis Page, for bribing electors in a Banbury by-election, had been told not to fear a charge of perjury as their evidence would not be on oath.[90]

The issue arose again ten years later when the Commons proposed to examine 'in the most solemn manner' the witnesses on a Bill for restoring the estates confiscated from the Jacobite Lord Derwentwater. The idea was eventually rejected.[91]

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89. H.M.C. Egmont Diary, ii, 64-5.

90. Harrowby MSS., document 29 (part I) 13 February 1722; C.J., xix, 744. The following year, one of the witnesses upon the Bill of Pains and Penalties against Francis Atterbury, Bishop of Rochester, changed her evidence before the Lords on the grounds that what she said before the Commons had not been on oath. Harrowby MSS., document 29 (part II) 8 May 1723.

91. H.M.C. Egmont Diary, i, 257-8.

> The arguments for not swearing the witnesses were that the House of Commons has not a right to do it; that it is erecting our House into a Court of Record, that the House of Lords will not suffer it, but will fling out the Bill,...that this is not the worst of it, for it may occasion a quarrel between both Houses, which must end in a speedy breaking up the session if not dissolution of the Parliament...That each part of the legislature ought to keep itself within its proper bounds, and that nothing destroys the power and even the very being of courts so much as the abuse of their power. That it is morally certain the Lords (who are as jealous of what they think is peculiar to themselves as we can be of our own rights) will at least reject the Bill, if not go further...It may also provoke the Lords to revive their pretensions to add pains and penalties to our bills and interfere in our right of giving money.

The House of Commons had finally won the exclusive rights for granting financial aid to the Crown as a result of the incessant wrangling which characterised the relations of the two assemblies in the latter part of the seventeenth century.[92] In 1678 the Commons passed a resolution defining their right over supply bills: 'That all aids and supplies, and aids to His Majesty in Parliament, are the sole gift of the Commons:...which ought not to be changed, or altered by the House of Lords'.[93] This supplemented an earlier resolution of 1671: 'That in all aids given to the King, by the Commons, the rate or tax ought not to be altered by the Lords'.[94]

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92. See B.L.Add.MS.6043, f.90.
93. C.J., ix, 509 (3 July 1678).
94. Ibid., p.235 (13 April 1671).

The controversy continued throughout the reigns of the last Stuarts, culminating in 1693 when the Upper House eventually passed without amendment the Land Tax Bill, though still asserting their right to amend to be 'a fundamental, inherent and undoubted right of the House of Peers, from which their lordships can never depart'.[95] All such protestations, however, were in vain, for thereafter the Crown's pleas for financial aid were directed solely to the source of those supplies.[96] The Speech from the Throne at the opening of each session of Parliament contained the sovereign's request for the annual supplies in a paragraph addressed specifically to the 'Gentlemen of the House of Commons'.[97] No privilege of the Lower House was more closely guarded than this, even to the extent of it becoming part of the usage of Parliament that no communication was made to the Lords of any Commons' address mentioning money.[98]

During the eighteenth century, therefore, the Lords' periodic assertions of their rights over money bills were no more than the feeble threats of an already vanquished opponent, yet simultaneously expressing the annoyance of a combatant too proud to admit defeat. So long as a tacit acknowledgement was made of its role in the legislature which granted the supplies, the Lords' grievances remained dormant,[99] but any departure from the normal mode of proceeding and to the detraction of the House of Lords was assured of causing a storm.

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95. L.J., xv,191 (20 January 1693).

96. E.g., Cholmondeley (Houghton) MSS. 65/79/2; e.g., L.J., xxiv, 261 and C.J., xxii, 142.

97. E.g., L.J., xxviii, 4(1753); xxxvi, 573(1782).

98. Thomas, House of Commons, pp.65-6.

99. In the debate of 28 February 1740 (see infra.,p.543), Lord Halifax claimed that 'All our amibition is to be consulted as a House of Parliament'. B.L.Add.MS.6043, f.23.

In April 1726, a royal message concerning the raising of an additional number of seamen was sent to the House of Commons only. The propriety of the procedure was hotly contested by the Lords, whose debate included rhetorical declarations of their role as the guardian of the people's liberties 'and next [to] the King - the principal part of the legislature', [100] and claiming that 'all demands of supply should come from the throne in the House of Peers', any other course being 'unparliamentary, new, and dangerous to the constitution'. [101] The issue was pursued as an opposition tactic against Sir Robert Walpole, the intended motion being to address the King to know who had advised him to make his request to the Commons only, whereas the Protest entered upon its defeat declared the Opposition's motive to have been to discourage 'evil ministers hereafter [from] a total neglect of this House'. [102] A similar motion took place in the Lords on 28 February 1740 when it was claimed that the King's message for supplies to pursue the war against Spain was against the privileges of the Lords because it had been sent to the Commons only. Lord Chancellor Hardwicke insisted that to send a message concerning finance to the House of Commons alone was as proper as referring matters of judicature only to the Lords. [103] The Opposition, however, rejected this and Lord Carteret, directing his appeal to the lords' self-esteem, claimed that, 'If such things are overlooked this House will come to be an empty room with a great coal fire, a few bishops and two judges, and the

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100. Parl.Hist., viii, 518.
101. Ibid., col.519. For the whole debate, see cols.518-21.
102. L.J., xxii, 650.
103. B.L.Add.MS.6043, f.26.

lords walking into the Court of Requests to know what message has been sent to the Commons'.[104]

On one point concerning financial matters, however, the constitutional position of the assemblies was absolutely clear, namely, that no money bill could begin in the Upper House or, if attempted, would be rejected out of hand by the Commons.[105] How extensive an interpretation the latter gave to the title money bill, and how zealous they were in defending this privilege, can be deduced from an observation made by Sir Dudley Ryder in 1742: 'The Lords cannot send a bill to the Commons that imposes a fee with the levying money on the people, and though it is only said that no greater a sum than so much shall be taken, that makes it a money bill'.[106]

The Commons' claims led to several restrictions being imposed on the Lords. The peers were denied any right to originate or amend specific bills of supply to the Crown, or any other legislation which imposed financial dues on the population.[107] Minor amendments, such as corrections to verbal or literal mistakes, were allowed; but 'those parts by which the money was granted',[108] and all clauses referring to its use, duration, and collection were exempt from being amended by the Lords.[109] Lords' amendments which might, in the long run, 'bring a charge upon the people'[110] were rejected, as

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104. Ibid., f.24.
105. Harrowby MSS., document 21 (part II), 1 March 1744; C.J., ix,509.
106. Harrowby MSS., document 21 (part II) 29 June 1742.
107. Hatsell, Precedents, iii, 138-9.
108. Harrowby MSS., document 21 (part II), 13 April 1743.
109. Hatsell, Precedents, iii, 139; e.g., Harrowby MSS. document 21 (part II), 21 March 1745; cf. ibid., 4 June 1747.
110. Hatsell, Precedents, iii, 139.

were their claims to impose fines and forfeitures.[111] Any digression from these conventions by the Lords would immediately be seized upon by the Lower House and, unless the controversial amendment was withdrawn, the Bill would be rejected outright, an action which at times called for a rigorous display of resolution: in February 1752, the Commons, having decided to reject an amended money bill by the Lords, 'the Speaker threw it on the Table, and the clerk threw it on the floor'.[112] The usual Commons' procedure for dealing with a money bill amended by the Lords was to postpone any further consideration of it, and then order a new bill taking account of the proposed amendments, in which form the new bill would probably pass through both Houses in a matter of days.[113] Thus, when both Houses were in accordance about the desirability of amending certain financial measures, it was far more convenient for the Lords to throw out a bill, knowing that the Commons would introduce a new measure, than to amend the original one and invoke the constitutional wranglings which were certain to delay the passing of a necessary law.[114] However, the

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111. Ibid. Lord Carteret highlighted the implication of this claim when he asserted during a debate on a turnpike bill on 12 March 1741 that to deny the Lords the right to impose fines was to encroach upon and restrict another field of their jurisdiction, that of judging a felony which was a 'pecuniary penalty'. B.L.Add. MS.6043, f.88. A list of Lords' amendments to legislation which the House of Commons termed money bills, and their final outcome, is to be found in Hatsell, Precedents, iii, 122-9.

112. Harrowby MSS., document 21 (part II) 25 February 1752. For a similar incident in 1779, see Thomas, House of Commons, p.66.

113. Ibid.

114. In the debate of 28 February 1740, Lord Hardwicke asserted, 'If there were any wrong clause in a money bill, we should reject the whole and let the Commons bring in another'. B.L.Add.MS.6043, f.26. Lord Bathurst explained this convention with regard to the Importation of Salted Provisions from Ireland Bill 1767. B.L.Loan MSS.57/1, Bathurst to Rev.Joshua Parry, 17 December 1767; L.J., xxxii, 24-5, 40.

rejection of a money bill was by no means the procedure to be adopted on all occasions. To have done so in 1766 against the Stamp Act Repeal Bill, which had passed the Commons by a large majority, would , in the Duke of Newcastle's words, have created a 'division of the two Houses of Parliament, the worst of all divisions'.[115]

The mid-eighteenth century saw an attempt by the House of Commons, under the leadership of its Speaker, Arthur Onslow, to extend further its powers over financial legislation by including any clause, in every type of bill, that imposed charges on the public. This explains their rejection of the Upper House's amendments to a vagrancy bill of 1743[116] and to a tithes bill in 1752, despite the fact that all precedents stood in favour of its acceptance by the Commons , so Lord Chancellor Hardwicke confided later to Sir Dudley Ryder.[117] A month later, Speaker Onslow accused the Lords of 'trifling on the Commons' privilege'[118] for extending the geographical limits within which private prosecutions against unlicensed music-halls could be financed out of the poor rate. A quarrel was avoided because no specific reference to privilege was made in the Commons' reasons for objecting to the clause. The Lords' eventually surrendered the amendment, but assumed a moral victory with the claim that the other House had conceded the point of privilege.[119] At the height of their offensive, the Commons claimed immunity from

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115. B.L.Add.MS.33001, ff.163-4. The Stamp Act of 1765 was a money bill, and so,consequently,was the bill repealing it.
116. Harrowby MSS., document 21 (part II) 13 April 1743.
117. Ibid., 25 February 1752. C.J., xxvi, 458.
118. Harrowby MSS., document 21 (part II), 20 March 1752.
119. Ibid., 25 March 1752.

alteration by the Lords for any measure involving government expenditure.[120] In 1779, to facilitate matters once more, the Commons accepted a more limited interpretation of a money bill as one which had originated in the Commons' Committee of Supply.[121] With or without this modification, the House of Lords could have done little to challenge the Commons' ever-increasing claims to the pre-eminent position in Parliament and of complete authority over money matters. That their relations on financial matters were on the whole peaceful during the eighteenth century, and any disagreements settled amicably, was due to the Lords' general acquiescence in the limitations imposed on them by the Commons. As put by Lord Chancellor Thurlow in 1782: 'The House of Lords has never given up their pretence to act in the matter of granting, applying or disposing of public money. At the same time they have looked on very patiently, while all that business was in fact transacted by the House of Commons'.[122]

If the management of money bills was no longer a sufficiently contentious issue to bring the two Houses of Parliament to a head-on confrontation, there were other subjects which could, and did. One such matter which came to the forefront of relations between the Lords and Commons during this period was the method of requesting the attendance of members of one House as witnesses in the other. The governing principle was that the fundamental equality of the Houses should be observed in all respects. The Upper House, therefore,

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120. E.g., Walpole, Memoirs of George II, iii, 281.

121. Parl.Hist., xx, 1009.

122. Wentworth Woodhouse Muniments, R 1-2079.

had no authority to summon or order a member of the House of Commons to appear before it, save when it sat in its judicial capacity at the trial of a peer , an exception that did not apply in impeachments where the Commons were equal participators in the proceedings.[123] Hence, the Lords were always expected to explain why the attendance of an M.P. was desired,[124] while the Commons would comply no more than to grant its member permission to go, having previously sought his consent, yet leaving the final decision to him approving 'That he may attend, if he thinks fit'.[125] The Commons' particular concern was that no member should be examined about his motives or conduct on any matter of business, and in May 1723 the Speaker of the Commons declared 'that it was criminal in any member to divulge what had passed in the House'.[126]

The established convention concerning peers was that they attended voluntarily as witnesses on receiving a direct request from the House of Commons.[127] It was, however, necessary for them to seek the permission of their own House before doing so, as it was contrary to a Lords' Standing Order for peers to be present during the proceedings of the Lower House.[128] During the 1760s, the House of Commons abandoned this procedure, and when summoning peers as witnesses began to observe the same conventions as were followed for its members. Hence, a message was sent to the House of Lords

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123. Hatsell, Precedents, iii, 20.
124. Ibid., pp.18,20; e.g., L.J., xx, 637(1718).
125. Hatsell, Precedents, iii, 19,20.
126. Knatchbull Diary, p.23 (7 May 1723).
127. Walpole, Memoirs of George III, iii, 188; also infra., p.552.
128. Standing Order No.51 (25 November 1696); e.g., L.J., xii, 167(1667); xiv, 282(1689); xxix, 343(1758).

requesting leave for a peer to attend the Commons, naming the cause on which he was to be examined. The Lords promised to send a reply by its own messengers. When the peer concerned had publicly agreed to the request from his place in the House, the Lords conveyed its approval to the Commons, while reserving for the peer the liberty to attend or not.[129]

Witnesses before the House of Lords, whether M.Ps. or not, were examined at the Bar of the House.[130] In the Commons, however, peers were escorted to an 'armed chair...put within the Bar by the doorkeeper, inclining to the left side coming into the House before you get to the gangway'.[131] As the peer appeared in the doorway accompanied by the Serjeant at Arms, the Bar, normally in a downward position while business was in progress, was raised; the peer, hat off, made the usual three obeisances and was conducted to the chair 'for his lordship to repose himself in',[132] whereupon he immediately covered his head. While seated before the Commons, the peer kept his hat on, but when answering the questions put to him he was expected to stand and uncover his head. When the examination was over, the peer again bowed three times as he withdrew from the Commons' chamber with the Serjeant walking at his right hand.[133] When lords came as witnesses to the Commons, the Serjeant at Arms

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129. E.g., ibid., xxxi, 50 (1965); also infra., pp.550-3.

130. Supra., p.41.

131. Clementson Diary, p.165.

132. Ibid. If a judge appeared before the Commons to give evidence, he would be conducted to a chair placed on the right side of the House 'for him to repose himself upon not in'; ibid., p.158.

133. Ibid., p.165.

always carried the Mace as he escorted peers to and from the Upper Chamber, and he remained standing, with the Mace, by their side throughout the examination. If peers appeared before a Committee of the Whole House of Commons, the Mace was placed under the Table.[134]

In December 1768 the manner of summoning peers as witnesses to the Commons came to the forefront of the political arena. On 28 November, John Wilkes requested the House of Commons to seek the permission of the House of Lords for Earl Temple to appear in the Lower House as a witness on his behalf. The request was no sooner granted than a similar application was made concerning the Earl of Sandwich and the Earl of March,[135] whom Wilkes wished to examine on a charge of corruption. Having agreed to the first request, the Commons could make no objection to the second; moreover, the incident was regarded as a deliberate attempt to effect a rift between the Houses, either because the Lords would deny the peers permission to attend, or because the embarrassed peers themselves would refuse to appear, which would delay the prosecution of the case against Wilkes.[136] The Commons' message was delivered to the Lords on 1 December, declaring that the named peers were required to be examined concerning Wilkes's petition to the Commons and the case against him in the Court of King's Bench.[137] Of the three lords,

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134. Hatsell, Precedents, iii, 6-7.

135. C.J., xxxii, 74; Walpole, (Yale) Correspondence, x, 272; xxiii, 73-4. Lord March's chaplain had procured the copy of the obscene publication Essay on Woman which had led to the original prosecution against Wilkes (ibid., x, 272 n.12). The Earl of Sandwich had been Northern Secretary at the time (1763-65) and it was he who made the complaint of breach of privilege to the House of Lords on 15 November 1763 (Parl.Hist., xv, 1346-7).

136. Walpole, Memoirs of George III, iii, 185.

137. L.J., xxxii, 187. The Lords did not sit on 29 and 30 November.

only Sandwich was present and, following the procedure, he declared himself 'ready and desirous' to go to the Commons, but added, 'if it is consistent with the rules and orders of this House'.[138] Sandwich's words caused doubts about the regularity of the Commons' request, and this sufficed for the Lords to decide to refer the Commons' message to the Committee for Privileges.[139]

The House of Commons renewed its request to examine Sandwich and March on 7 December, this time on the grounds of Wilkes's charge of corruption against a Treasury official.[140] The same day, the matter was considered in a Lords' Committee of the Whole House, which resolved that the message 'sent from the House of Commons [was] not agreeable to the ancient and regular course of Parliaments';[141] furthermore, the Lords desired to know of the Commons what grounds they had 'for suspecting two peers of this House of being privy to the subornation of evidence with the public money'.[142] The resolutions were approved by the House, following which the peers sought an immediate conference with the Commons 'upon the subject matter of their message to the Lords'; to which the Lower House at first obstructively wanted to know which message was referred to, 'they having sent several messages this day to the Lords'.[143] There were

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138. Ibid., cf. xxxi, 50(1765).

139. Ibid., xxxii, 187. H.L.R.O., Committee for Privileges Minute Books, vi, 38-9,39.

140. L.J., xxxii, 191-2.

141. Ibid., p.193.

142. Ibid. For a short account of the proceedings, see Bedford Journal, i, 617.

143. L.J., xxxii, 193.

no further delays, and the conference was duly held.[144] The House of Commons based its case for applying directly to the House of Lords for the attendance of its members as witnesses on a precedent dating to 1548.[145] The written defence of this claim was conveyed to the Lords at another conference on 12 December 1768,[146] and was referred to the Committee for Privileges. This Committee's search of the Lords' journals revealed that there had been no 'applications from the House of Commons by message' for the attendance of peers prior to that of 1765 for the Earl of Morton to be examined on the Longtitude Bill,[147] and that all previous examples showed that such peers as had been approached personally by the Commons to appear as witnesses had requested the leave of the House of Lords to do so. In all cases the House had granted leave for the lords concerned to do as they pleased.[148] Independent support for the view that this had been the usual convention comes from Horace Walpole, who remarked that 'usage bore that Wilkes should have applied first to the three lords themselves, who might have gone voluntarily before the Commons,...or if the three lords had refused to appear, the Commons then might have sent to demand them, which probably would have been refused'.[149] There is no evidence in the Journals of the Committee's full report ever having been presented to the House. Therefore, in December 1768 this controversial affair was resolved, in effect, by evading the whole problem. On 19 December, the Committee

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144. Ibid., p.194.
145. Hatsell, Precedents, iii, 7.
146. L.J., xxxii, 199-200.
147. Ibid., xxxi, 50.
148. H.L.R.O., Parliament Office Papers 58/26 'Report of the Lords Committee for Privileges'.
149. Walpole, Memoirs of George III, iii, 188.

for Privileges made a preliminary report, arguing that the examination of the journals would take considerable time. The House of Lords, therefore, decided to follow its interim proposals. Hence, the Lords' written reasons, presented to the Commons at a conference that same day, emphasised that the Upper House was conducting its own inquiry into the precedents for summoning peers as witnesses, but that in the meantime the Earls of Sandwich and March, 'having made it their personal request to their lordships to have leave to go to the House of Commons' had received permission to do so.[150] Any remaining doubts as to the Commons' right to communicate such requests by message in the future were dispelled in 1779 when this procedure was adopted to desire the attendance of the Earls Cornwallis and Harrington.[151] Its acceptance as the regular usage of Parliament thus established both Houses on an equal footing with regard to asking leave for the attendance of their respective members.

If for most of the eighteenth century an amicable, though unstable, peace reigned over the relationship of the two chambers of Parliament,[152] before the end of the period under study the explosion which had always threatened took place. The Standing Order of 1696, which lay at the root of all the problems caused by the official attendance of individual peers in the House of Commons, presented no problem in the private or

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150. L.J., xxxii, 214,215. The two peers had indicated their consent on 12 December, p.198.

151. H.L.R.O., Parliament Office Papers 58/26, 'Messages from the House of Commons requesting attendance of lords to be examined on various matters'; Hatsell, Precedents, iii, 8; L.J., xxxv, 671, 694.

152. Walpole, (Yale) Correspondence, xxiii, 167-8(1770).

informal sphere; it was simply ignored.[153] Peers who wished to observe Commons' proceedings were admitted into the Lower House as a privileged category of strangers, being directed to sit in the space below the public gallery, as well as in it.[154] The absence of any reciprocal arrangements for the accommodation of the Commons in the House of Lords caused a latent feeling of animosity and was regarded as a slight by the members of the Lower House.

This resentment erupted into open hostility as a result of the incident on 10 December 1770 when the House of Lords, crowded with both peers and visitors, was cleared of all strangers. Among those forcibly ejected were members of the House of Commons, some of whom were there on official business to present a bill.[155] The Commons immediately retaliated by closing its doors to the lords and, for the next few years, feelings of animosity and resentment prevailed in the relations of the two Houses. It explains why the Commons took such an exception to the irregularity in the personnel of the Lords' messengers on 1 April 1772;[156] the same incident, conceivably, as was being alluded to in the Lords on 6 April 1772 when a motion was made for a conference with the Commons 'on matters concerning a good correspondence between the two Houses', but the motion was rejected after a short debate.[157] A similar motion was made in the Commons

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153. E.g., ibid., xvii, 431(1742); N.L.W. MS.1352, f.190(1744); London Evening Post, 19-22 January 1765; Thomas, House of Commons, p.248(1769); Chatham Corr., iii, 410-12(1770); Wentworth Woodhouse Muniments, R 1-1558(1775).

154. E.g., Walpole, Memoirs of George III, i, 260(1763); ii,35,43 (1765).

155. See supra., p.331.

156. Supra., p.527.

157. L.J., xxxiii, 341.

on 9 April [158] following a Committee report on the precedents for sending messages from the Lords to the Commons, and concerning the disrespect shown to the Speaker and other members of the House when attending the House of Lords on the first day of the session, and at other times when legislation was to be given the Royal Assent. [159] The motion for a conference was rejected also in the Commons, but the report reflects the degree of ill-feeling that existed between the Houses at the time. [160] Although these tensions were relieved a few years later, the grievances remained. On 16 December 1778, Sir Phillip Jennings Clerke complained that the large number of peers who came to the Commons to hear its important debates 'not only crowded the gallery, but filled the body of the House. This was extremely disagreeable...members of this House were obliged to stand for hours together below the Bar of the Peers...indiscriminately mixed with a mob'. [161] A few months later the Duke of Manchester acknowledged this civility from the M.Ps. and proposed that the compliment be returned by providing separate standing room for the Commons between the throne and the woolsack. [162] This and similar proposals in later years were rejected, leaving the problem unresolved until after the House of Lords moved to the Court of Requests in 1800. [163]

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158. C.J., xxxiii, 681.

159. This referred to the shouts for clearing the House before the Speaker had left the Lords' chamber on 21 January 1772, and the complaints by M.Ps. of having been treated roughly by officers of the House of Lords on this and other occasions; ibid., pp.680-1.

160. Ibid., p.682; Clementson Diary, pp.156-8.

161. Almon, Parl.Register, xi, 174-5, quoted in Thomas, House of Commons, p.150.

162. Almon, Parl.Register, xiv, 146.

163. See supra., p.334. Colvin, History of the King's Works, vi, 515, 519-20.

The relationship between the House of Commons and the House of Lords during the eighteenth century was one of veiled jealousy, a mutual jealousy exacerbated by their respective rising and declining fortunes. Their skirmishes concerned relatively trivial matters, prominent among them being points of procedure. The rivalry over money bills was really a legacy of the previous century, but the conflict was kept alive by the Commons' attempts to extend its authority over every financial provision made by Parliament, and not to supply bills only. The breach in their relations in 1770 occurred on an issue over which the Houses were not in contention, both being interested in securing the privacy of their proceedings; but combined with the long-standing grievances over the accommodation of members of the House of Commons, the incident of December 1770 maintained both Houses in a quarrelsome mood for several years thereafter.

APPENDIX I

STAGES OF PUBLIC LEGISLATION

1. That leave be given to bring in a bill.
2. That the bill be read a first time.
3. That the bill be read a second time on a named day.
4. That the bill be read a second time now.
5. That the bill be committed.
6. That the House be put into a Committee on a named day.
7. That the House agree with the instructions to the Committee.
8. Committee of the Whole House: that the House be resumed.
9. That the report of the Committee be received on a named day.
10. That the House agree with the Committee in the amendments.
11. That the bill be read a third time on a named day.
12. That the bill be read a third time now.
13. That the bill do pass.

These are the stages at which debates and divisions are known to have occurred on legislation in the House of Lords in the period 1714-84. Debates arose at only a few of these stages, and generally several of the stages would be taken together, so that a bill would normally pass through the House of Lords in three or four days, apart from the Committee stage. It was quite normal to take stages 1, 2, and 3 together, while stages 4, 5, and 6 occurred on another day. If no amendments were made by the Committee, the report could be made immediately on resuming the House, no question requiring to be put for doing so,[i] and then followed by stage 11. Amendments, however,

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(i) H.L.R.O. Parliament Office Papers, 74/1, John Croft's Precedent Book, p.8.

meant that the Committee was followed by stage 9, allowing stages 10 and 11 to be taken at another sitting. The final day's proceedings would involve stages 12 and 13.

There were also several other stages which, during the period under study, appear to have been purely formal:

1. That the bill be read a second time — this followed stage 2.
2. That the House be put into a Committee now — which immediately preceded stage 8.
3. That the bill be engrossed — this occurred between stages 10 and 11.
4. That the bill be sent to the House of Commons — this would be the final question put to the House.

APPENDIX II

FEES ON PRIVATE LEGISLATION, PAYABLE TO THE OFFICERS OF THE HOUSE OF LORDS. (i)

For every successful petition for a private bill :	£ s d
To the Clerk of the Parliaments	0..10..0
Clerk Assistant	0.. 4..6
Reading Clerk	0.. 2..0
For swearing in each witness:	
To the Clerk Assistant	0.. 1..0
Yeoman Usher	0.. 1..0
For a certificate of their having been sworn, which was to be presented to the judges	0.. 6..8
Fees on private bills:	
To the Lord Chancellor, or Speaker of the House of Lords	10.. 0..0
Clerk of the Parliaments	5.. 0..0
Gentleman Usher of the Black Rod	5.. 0..0
Clerk Assistant	2.. 0..0
Yeoman Usher	1.. 0..0
Reading Clerk	2.. 0..0
Doorkeepers; five shillings each	2.. 0..0
These fees were to be paid before the second reading	

(i) Part of the Committee's report of 22 March 1726, L.J., xxii, 628. cf. B.L.Add.MS.22263, f.149.

For entering the names of the Lords' Committees, and providing a copy of the list if required:

To the Clerk Assistant	£0..10..0

To the Officers in attendance at a Committee:

To the Clerk	2.. 0..0
Yeoman Usher	1.. 0..0
Doorkeepers	2.. 0..0

For engrossing a private bill:

To the Clerk Assistant:	first skin	0..13..4
	every other skin	0..10..0

(At least 40 lines to be written on each skin).

APPENDIX III

LEGAL FEES, PAYABLE TO THE OFFICERS OF THE HOUSE OF LORDS.(i)

	£ .. s .. d
For certifying a private bill, or any other record concerning a private person, brought by writ of *certiorari* out of the Court of Chancery:	
To the Clerk of the Parliaments: first skin	1 .. 6 .. 8
every other skin	0..13 .. 4
To the Clerk Assistant: first skin	0..13 .. 4
every other skin	0 .. 6 .. 8
For examining the transcript of the court records upon a writ of error, and reading it in the House of Lords:	
To the Clerk of the Parliaments	1 .. 6 .. 8
For entering the judgement on a writ of error, and making a copy thereof:	
To be shared between the Clerk of the Parliaments and the Clerk Assistant	2..10 .. 0
For a certificate of diminution on a writ of error:	0 .. 6 .. 8
To be paid by both parties at an appeal hearing:	
To Black Rod	2 .. 0 .. 0
Yeoman Usher	1 .. 0 .. 0
Doorkeepers	4 0 0
Fees to be paid only on the first day of a hearing	

(i) Part of the Committee's report on 22 March 1726, *L.J.*, xxii, 628-9. See also B.L.Add.MS.22263, f.149.

£ .. s .. d

For a copy of the judgement on an appeal:

To be shared between the Clerk of the Parliaments and the Clerk Assistant — 2 .. 0 .. 0

For an order made by the House on an appeal at the request of either party:

To the Clerk of the Parliaments — 0..14 .. 6

For entering into recognizance — 1 .. 0 .. 0

For searching for a record:

To the Clerk of the Parliaments — 0 .. 2 .. 6

Clerk Assistant — 0 .. 1 .. 0

For a copy of the record, per sheet — 0 .. 1 .. 0

A tip for the clerk who made the copy — 0 .. 2 .. 0

Fees payable by a peer committed to the custody of Black Rod:

Archbishop — 20 .. 0 .. 0

Duke — 20 .. 0 .. 0

Marquess — 13 .. 6 .. 8

Earl — 10 .. 0 .. 0

Viscount — 8 .. 0 .. 0

Bishops London, Durham, and Winchester — 10 .. 0 .. 0

Bishop — 7 .. 0 .. 0

Baron — 6..13 .. 4

For every day a peer continued in custody — 6..13 .. 4

£ .. s .. d

Fees payable by a private person committed in custody :

To Black Rod:	attachment fee	5 .. 0 .. 0
	discharge fee	5 .. 0 .. 0
	for every day spent in custody	1 .. 6 .. 8
Yeoman Usher:	attachment fee	2 .. 0 .. 0
	discharge fee	2 .. 0 .. 0
Serjeant-at-Arms:	attachment fee	5 .. 0 .. 0
	discharge fee	5 .. 0 .. 0
	for every day spent in custody	1 .. 6 .. 8
	allowance per mile travelled outside London in pursuit of an offender	0 .. 1 .. 0

If Black Rod or Serjeant-at-Arms allowed an offender to escape from custody, they not only lost their own fees, but had to recompense the other officers of the House of Lords for their losses.

APPENDIX IV

SPEAKERS OF THE HOUSE OF LORDS 1714-1784

Status	Speaker	Dates when first and last sat as Speaker.[i]
Lord Chancellor	Lord Harcourt	1-25 August 1714.
Lord Chancellor	Lord Cowper	23 September 1714 - 21 March 1718.
Lord Chancellor	Earl of Macclesfield[ii]	20 May 1718 - 19 December 1724.
Chief Justice of Common Pleas	Sir Peter King (Commissioned 8 January 1725)	11 January 1725 - 31 May 1725.
Lord Chancellor	Lord King	31 May 1725 - 15 November 1733
Lord Chancellor	Lord Talbot	17 January 1734 - 9 February 1737
Chief Justice of King's Bench	Lord Hardwicke (Commissioned 16 February 1737)	16-19 February 1737.
Lord Chancellor	Earl of Hardwicke[iii]	21 February 1737 - 18 November 1756.
Peer	Lord Sandys (Commissioned 30 November 1756)	2 December 1756 - 28 June 1757.

(i) These do not necessarily correspond exactly with the dates of a Speaker's term as Lord Chancellor.

(ii) Lord Parker till 1721.

(iii) Lord Hardwicke till 1754.

Status	Speaker	Dates when first and last sat as Speaker
Lord Keeper / Lord Chancellor	Earl of Northington [iv]	1 July 1757 - 12 July 1766.
Lord Chancellor	Lord Camden	16 September 1766 - 15 January 1770.
Chief Justice of King's Bench	Lord Mansfield (Commissioned 22 January 1770)	22 January 1770 - 22 January 1771.
Lord Chancellor	Earl Bathurst [v]	25 January 1771 - 3 June 1778.
Lord Chancellor	Lord Thurlow	14 July 1778 - 4 April 1783.
Chief Justice of King's Bench	Lord Mansfield (Previous commission)	8 April - 23 December 1783.
Lord Chancellor	Lord Thurlow	24 December 1783 - 15 June 1792.

(iv) Supra, p.187, n.103.

(v) Lord Apsley till 1775.

DEPUTY SPEAKERS OF THE HOUSE OF LORDS 1714-1784

Status	Deputy Speaker	Dates when first and last sat as Speaker.
Chief Justice of Common Pleas	Sir Peter King (Commissioned 29 January 1719 30 October 1722)	19 May 1719 / 10 December 1723.
Chief Justice of King's Bench	Sir Robert Raymond (Commissioned 24 June 1725 29 January 1728)	1 July 1725 / 19 February 1733.
Chairman of Committees 1724-33	Lord De La Warr (Commissioned 15 April 1733)	18 / 24 April 1733.
Chief Justice of King's Bench	Lord Hardwicke (Commissioned 16 January 1737)	10 and 11 February 1737.
Chief Justice of King's Bench	Sir William Lee (Commissioned 23 January 1738)	3 June 1740 / 16 July 1752.
Ex-Chairman of Committees	Lord De La Warr (Commissioned 18 March 1754)	19-28 March 1754.
Chief Justice of King's Bench	Sir Dudley Ryder (Commissioned 19 November 1754)	20 November 1754 / 19 May 1756.
Chief Justice of King's Bench	Lord Mansfield (Commissioned 7 November 1759)	26 October 1760 / 24 January 1766.
Chief Justice of Common Pleas	Sir John Eardley Wilmot (Commissioned 28 November 1766)	3 March 1769.

Status	Deputy Speaker	Dates when first and last sat as Speaker
Secretary of State for the Northern Department	Lord Rochford (Elected by peers)	25 September 1770.
Chief Justice of King's Bench	Lord Mansfield (Commissioned 22 January 1770)	6 April 1772 / 12 May 1778.
Lord President of the Council	Earl Bathurst (Elected by peers)	7 June 1780.
	Lord Mansfield (Previous commission)	24 March 1784.

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